

EXHIBIT 13

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: :
: Chapter 11
: Case No.
HIGHLAND CAPITAL MANAGEMENT
L.P. :
Debtor. :

HIGHLAND CAPITAL MANAGEMENT, L.P.

Plaintiff, :

vs. : Adversary
: Proceeding No.

NEXPOINT ADVISORS, L.P., : 21-03005-sgj
JAMES DONDERO, NANCY DONDERO,:
AND THE DUGABOY INVESTMENT :
TRUST, :
:

Defendants.

REMOTE VIDEO DEPOSITION OF JAMES DONDERO

VOLUME III

Thursday, November 4, 2021

25 JOB NO. 202288

	Page 2	Page 3
1		1 APPEARANCES:
2		2
3		3 Attorneys for Highland Capital Management L.P.:
4	November 4, 2021	4 (Via videoconference)
5	1:17 p.m. CDT	5 PACHULSKI STANG ZIEHL & JONES
6		6 780 Third Avenue
7		7 New York, New York 10017
8	Remote video deposition of JAMES	8 BY: JOHN MORRIS, ESQ.
9	DONDERO taken in the above-entitled matter	9 HAYLEY WINOGRAD, ESQ.
10	before Suzanne J. Stoltz, a Certified Shorthand	
11	Reporter, Certified Realtime Reporter,	
12	Registered Professional Reporter, and Notary	
13	Public of the State of Texas, on Thursday,	
14	November 4, 2021, commencing at 1:17 p.m. CDT.	
15		10 Attorneys for NexPoint Advisors, L.P.:
16		11 (Via videoconference)
17		12 MUNSCH HARDT KOPF & HARR
18		13 500 North Akard Street
19		14 Dallas, Texas 75201
20		15
21		16 BY: THOMAS BERGHMAN, ESQ.
22		17
23		18 Attorneys for James Dondero, Nancy Dondero,
24		19 HCRC HCMS:
25		20 (Via videoconference)
		21 STINSON
		22 3102 Oak Lawn Avenue
		23 Dallas, Texas 75219
		24 BY: DEBORAH DEITSCH-PEREZ, ESQ.
		25 BY: MICHAEL AIGEN, ESQ.
	Page 4	Page 5
1	APPEARANCES (Continued):	1 APPEARANCES (Continued):
2		2
3	Attorneys for Nancy Dondero:	3 ALSO PRESENT:
4	(Via videoconference)	4 (Via Videoconference)
5	GREENBERG TRAURIG	5 JACOB ARVOLD, Videographer
6	220 Ross Avenue	6
7	Dallas, Texas 75201	7 (Via Videoconference)
8	BY: DANIEL ELMS, ESQ.	8 LA ASIA CANTY, Legal Assistant
9	Attorneys for The Dugaboy Investment Trust:	9 c/o Pachulski Stang Ziehl & Jones
10	(Via videoconference)	10
11	HELLER, DRAPER, HAYDEN, PATRICK & HORN	11
12	650 Poydras Street	12
13	New Orleans, Louisiana 70130	13
14	BY: DOUGLAS DRAPER, ESQ.	14
15	MICHAEL LANDIS, ESQ.	15
16	Attorneys for The Litigation Trust:	16
17	(Via videoconference)	17
18	QUINN EMANUEL URQUHART & SULLIVAN	18
19	51 Madison Avenue	19
20	New York, New York 10010	20
21	BY: ROBERT LOIGMAN, ESQ.	21
22	DEBORAH NEWMAN, ESQ.	22
23		23
24		24
25		25

		Page 6		Page 7
1	I N D E X		1	I N D E X (Continued)
2			2	
3	EXAMINATION	Page No.	3	E X H I B I T S (Continued)
4	JAMES DONDERO		4	
5	BY MR. MORRIS	10	5	Exhibit
6			6	Name Description Page No.
7			7	Exhibit Highland Capital Management, 123
8	EXHIBITS		8	34 L.P., Consolidated Financial
9			9	Statements and Supplemental
10	Exhibit		10	Information, dated December
11	Name Description Page No.		11	31, 2018, Bates stamped
12	Exhibit James Dondero Compensation 56		12	D-CNL000212 through
13	68 and Benefits Statement, Bates stamped D-CNL003585		13	D-CNL000257
14	Exhibit James Dondero Compensation 59		14	Exhibit Memorandum, dated 130
15	50 and Benefits Statement, Bates stamped D-CNL003587		15	59 October 23, 2020, Bates
16	Exhibit E-mail correspondence, Bates 95		16	stamped HCMFAS 000025
17	53 stamped D-CNL003768 through D-CNL003770		17	through HCMFAS 000031
18	Exhibit E-mail correspondence, Bates 107		18	Exhibit Defendant James Dondero's 163
19	54 stamped D-CNL003777 through D-CNL003779		19	24 Objections and Responses to
20	Exhibit E-mail correspondence, Bates 116		20	Plaintiff's Requests for
21	56 stamped D-CNL003763		21	Admission, Interrogatories,
22	Exhibit Promissory Note, Bates 119		22	and Requests for Production
23	57 stamped D-CNL003764 through D-CNL003765		23	Exhibit Defendant NexPoint Advisors, 173
24			24	27 L.P.'s Objections and
25			25	Responses to Plaintiff's
			26	Requests for Admission,
			27	Interrogatories, and
			28	Requests for Production
			29	(Exhibits attached to transcript.)
		Page 8		Page 9
1	JAMES DONDERO		1	JAMES DONDERO
2	THE VIDEOGRAPHER: Good afternoon.		2	THE VIDEOGRAPHER: Thank you.
3	My name is Jacob Arvold. I'm a certified		3	This is the start of Media Number 1,
4	legal videographer in association with		4	Volume II [sic] of the video-recorded
5	TSG Reporting, Inc.		5	deposition of James Dondero in the matter
6	Due to the severity of COVID-19 and		6	of In Re: Highland Capital Management,
7	following the practice of social		7	L.P., in the United States Bankruptcy Court
8	distancing, I will not be in the same room		8	for the Northern District of Texas.
9	with the witness; instead, I will record		9	This deposition is being held
10	this video deposition remotely.		10	remotely on November 4, 2021, at
11	The reporter, Suzanne Stotz, also		11	approximately 1:17 p.m.
12	will not be in the same room and will swear		12	Counsel, please introduce
13	the witness remotely.		13	yourselves.
14	Do all parties stipulate to the		14	MR. MORRIS: Everybody is – is on
15	validity of video recording and remote		15	here. I don't – we can't take the time to
16	swearing and that it will be admissible in		16	do that. I'm familiar with everybody on
17	the courtroom as if it had been taken		17	here. Everybody's appeared in this action
18	following Rule 30 of the Federal Rules of		18	before, and I'd like to proceed.
19	Civil Procedures and the state's rules		19	THE VIDEOGRAPHER: All right. The
20	where this case is pending?		20	appearances will be on the stenographic
21	MR. MORRIS: Yes.		21	record.
22	If anybody objects to that, please		22	Will the court reporter please
23	speak up.		23	reswear the witness.
24	Nobody has spoken up. So everybody		24	THE COURT REPORTER: Could you raise
25	is deemed to have accepted that.		25	your hand.

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: (Complies with</p> <p>3 request.)</p> <p>4 JAMES DONDERO,</p> <p>5 having first been duly sworn, was examined and</p> <p>6 testified as follows:</p> <p>7 MS. DEITSCH-PEREZ: I only have one</p> <p>8 questions. Who's Robert Loigman?</p> <p>9 MR. LOIGMAN: I already stated for</p> <p>10 the record. I'm with Quinn Emanuel. I'm</p> <p>11 Debbie Newman's partner.</p> <p>12 MS. DEITSCH-PEREZ: Okay. Thank</p> <p>13 you.</p> <p>14 MR. MORRIS: Can we please put up on</p> <p>15 the screen the document that's been marked</p> <p>16 Exhibit 31.</p> <p>17 MS. CANTY: (Complies with request.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Mr. Dondero, do you understand that</p> <p>21 this is a continuation of your deposition from</p> <p>22 Friday?</p> <p>23 A. Yes.</p> <p>24 Q. Have you spoken with anybody about</p> <p>25 your testimony since we concluded the</p>	Page 10	<p>1 JAMES DONDERO</p> <p>2 deposition on Friday?</p> <p>3 A. No.</p> <p>4 Q. Nobody in the world?</p> <p>5 A. Just my attorney.</p> <p>6 Q. And did you speak with your attorney</p> <p>7 about the substance of the deposition on</p> <p>8 Friday? Just –</p> <p>9 MS. DEITSCH-PEREZ: I'm going to</p> <p>10 direct – I'm going to direct him not to</p> <p>11 answer.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Okay. I'm just asking you a</p> <p>14 yes-or-no question. I'm not asking for the</p> <p>15 substance of any communications.</p> <p>16 MS. DEITSCH-PEREZ: Well, you're –</p> <p>17 one, I'd have to talk to him to see what he</p> <p>18 thinks "substance" means.</p> <p>19 And to the extent that's</p> <p>20 substantive, you're actually getting at the</p> <p>21 content potentially of a discussion. So</p> <p>22 I'm going to direct him not to answer.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Are you going to follow your</p> <p>25 counsel's advice?</p>	Page 11
<p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. How much time did you spend speaking</p> <p>4 with your attorney since the conclusion of the</p> <p>5 last deposition?</p> <p>6 A. 30 minutes, 40 minutes.</p> <p>7 Q. Are you aware that Alan Johnson</p> <p>8 testified in this case the other day?</p> <p>9 A. I don't know who Alan Johnson is.</p> <p>10 Uh, no.</p> <p>11 Q. Okay. Is it fair to say that you</p> <p>12 have no knowledge of Mr. Johnson's testimony?</p> <p>13 A. I have no knowledge of Mr. Johnson's</p> <p>14 testimony.</p> <p>15 Q. Are you aware that an expert was</p> <p>16 examined by me earlier in the week in</p> <p>17 connection with this case?</p> <p>18 A. I'm aware there's an expert. I'm</p> <p>19 not – I'm not aware that you've examined,</p> <p>20 deposed, or whatever you did with him.</p> <p>21 Q. Okay. When did you speak with your</p> <p>22 counsel for 30 minutes about – following last</p> <p>23 Friday's examination?</p> <p>24 A. About 40 minutes ago.</p> <p>25 Q. Okay.</p>	Page 12	<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Can we go to</p> <p>3 paragraph 82 of this document –</p> <p>4 Q. – Mr. Dondero, do you see that this</p> <p>5 is your answer to the Plaintiff's Amended</p> <p>6 Complaint.</p> <p>7 A. Yes.</p> <p>8 Q. And we looked at this the other day;</p> <p>9 do you remember that?</p> <p>10 A. Yes.</p> <p>11 MR. MORRIS: Can we go to page –</p> <p>12 paragraph 82, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. And I just want to table set to make</p> <p>16 sure we're on the same page.</p> <p>17 Paragraph 82 describes the</p> <p>18 agreements that you entered into with Dugaboy</p> <p>19 consuming the forgiveness of certain Promissory</p> <p>20 Notes subject to conditions subsequent.</p> <p>21 Is that a fair overarching overview</p> <p>22 of the nature of the agreements?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And for the rest of the</p> <p>25 deposition today, when I use the phrase</p>	Page 13

<p>1 JAMES DONDERO</p> <p>2 "agreements," I'm going to mean the agreements</p> <p>3 that are referred to in paragraph 82; is that</p> <p>4 fair?</p> <p>5 A. Yes, generally. If I have any</p> <p>6 questions, I'll – I'll ask.</p> <p>7 Q. Thank you very much.</p> <p>8 The agreements covered each of the</p> <p>9 notes that are the subject of the lawsuits that</p> <p>10 Highland commenced against you, HCRE Services,</p> <p>11 and NexPoint; is that right?</p> <p>12 A. The – yes.</p> <p>13 Q. What are you looking at?</p> <p>14 A. Just this note sheet that covers all</p> <p>15 the notes.</p> <p>16 Q. Oh.</p> <p>17 MR. MORRIS: Deborah, I would demand</p> <p>18 that that sheet be produced immediately.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: Okay. And I would ask</p> <p>21 him to put it away.</p> <p>22 MS. DEITSCH-PEREZ: No. He's a</p> <p>23 30(b)(6) witness. He's entitled to have a</p> <p>24 list of the notes. He sure he is.</p> <p>25 MR. MORRIS: I'm telling you now –</p>	Page 14	Page 15
<p>1 JAMES DONDERO</p> <p>2 okay?</p> <p>3 Please put it away.</p> <p>4 THE WITNESS: Isn't that what this</p> <p>5 deposition is, right? This deposition –</p> <p>6 MS. DEITSCH-PEREZ: Well, this</p> <p>7 deposition is both.</p> <p>8 We're going to take a break for a</p> <p>9 second. Let me think about that, but</p> <p>10 I'll –</p> <p>11 MR. MORRIS: I object. I really</p> <p>12 object. I really object. I'm glad that</p> <p>13 this is all on the record. I object.</p> <p>14 My request is that he put it away</p> <p>15 and answer questions in his capacity as an</p> <p>16 individual.</p> <p>17 I don't know why we need to take a</p> <p>18 break.</p> <p>19 MS. DEITSCH-PEREZ: Well, because</p> <p>20 I'm going to go take a picture of it and</p> <p>21 send it to you.</p> <p>22 MR. MORRIS: I don't want you to do</p> <p>23 that, though.</p> <p>24 MS. DEITSCH-PEREZ: Why don't you</p> <p>25 want – okay.</p>	Page 16	Page 17
		<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: We can do that – we</p> <p>3 can do that when I ask him questions as a</p> <p>4 30(b)(6) witness.</p> <p>5 By the way, it's still</p> <p>6 inappropriate, but –</p> <p>7 MS. DEITSCH-PEREZ: No, it's not</p> <p>8 John.</p> <p>9 MR. MORRIS: Okay.</p> <p>10 MS. DEITSCH-PEREZ: It's just not.</p> <p>11 You can say it as much as you want. It</p> <p>12 doesn't make it inappropriate.</p> <p>13 And I am going to – I want to think</p> <p>14 for a minute about whether or not your</p> <p>15 request to have him not have it in front of</p> <p>16 him in his individual capacity is</p> <p>17 appropriate. And I'm not going to make a</p> <p>18 snap decision. I'm going to talk to my</p> <p>19 colleagues, and we'll be back on the record</p> <p>20 in a couple of minutes.</p> <p>21 MR. MORRIS: I object, but I can't</p> <p>22 stop you.</p> <p>23 MS. DEITSCH-PEREZ: Okay.</p> <p>24 THE VIDEOGRAPHER: Would you like to</p> <p>25 go off the video record, Counsel?</p>

<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: No, no, not at all.</p> <p>3 THE VIDEOGRAPHER: Okay.</p> <p>4 MR. MORRIS: And just keep the --</p> <p>5 keep the record going.</p> <p>6 THE VIDEOGRAPHER: Yep, will do.</p> <p>7 MR. MORRIS: And we're not off the</p> <p>8 record?</p> <p>9 THE VIDEOGRAPHER: Correct.</p> <p>10 THE COURT REPORTER: Correct.</p> <p>11 MS. DEITSCH-PEREZ: Okay. We're</p> <p>12 back on the record.</p> <p>13 THE VIDEOGRAPHER: We remained on</p> <p>14 the record.</p> <p>15 MS. DEITSCH-PEREZ: Okay. And this</p> <p>16 part – this – at this point Mr. Morris</p> <p>17 only taking Mr. Dondero's deposition in his</p> <p>18 personal capacity, not as a 30(b)(6)</p> <p>19 witness.</p> <p>20 If you want to resume taking his</p> <p>21 deposition as a 30(b)(6) witness, let me</p> <p>22 know; and I will tell him to get his list</p> <p>23 of notes.</p> <p>24 MR. MORRIS: So he doesn't have it</p> <p>25 in front of him right now?</p>	Page 18	<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Correct.</p> <p>3 MS. DEITSCH-PEREZ: Correct, he does</p> <p>4 not.</p> <p>5 MR. MORRIS: Okay. I'm going to</p> <p>6 proceed; and I would ask, Deborah, that</p> <p>7 somebody from your office send that to me</p> <p>8 as soon as possible. I'm sure it's on an</p> <p>9 e-mail somewhere and all they have to do is</p> <p>10 hit send.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Mr. Dondero, let's continue.</p> <p>13 So you don't have that document in</p> <p>14 front of you right now?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. How many agreements did you</p> <p>17 enter into with Dugaboy?</p> <p>18 MS. DEITSCH-PEREZ: You mean with</p> <p>19 the Dugaboy trustee?</p> <p>20 We had an agreement that you were</p> <p>21 going to refer to these as the agreements</p> <p>22 with the Dugaboy trustee. So let's stay</p> <p>23 consistent.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Mr. Dondero, how many agreements did</p>	Page 19
<p>1 JAMES DONDERO</p> <p>2 you enter into with Dugaboy trustee concerning</p> <p>3 Promissory Notes?</p> <p>4 A. Is your question – is your</p> <p>5 questions how many Notes were entered into?</p> <p>6 Q. No. How many separate agreements</p> <p>7 did you enter into?</p> <p>8 A. The 2017, '18, and '19 agreements.</p> <p>9 Q. Okay. I didn't ask you what</p> <p>10 agreements. I asked how many agreements you</p> <p>11 entered into with the Dugaboy trustee.</p> <p>12 MS. DEITSCH-PEREZ: Asked and</p> <p>13 answered.</p> <p>14 THE WITNESS: Three major ones.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Are there any minor ones?</p> <p>17 A. Not that I can recall right now.</p> <p>18 Q. Okay. When did you enter into your</p> <p>19 first major agreement with the Dugaboy trustee?</p> <p>20 A. At the end of '17.</p> <p>21 Q. Meaning December 2017 or early 2018?</p> <p>22 A. Yes.</p> <p>23 Q. What Promissory Notes are the</p> <p>24 subject of the first major agreement that you</p> <p>25 entered into with the Dugaboy trust- -- with</p>	Page 20	<p>1 JAMES DONDERO</p> <p>2 the Dugaboy trustee?</p> <p>3 A. I don't remember which ones</p> <p>4 specifically. I remember the amount was more</p> <p>5 substantial than subsequent years.</p> <p>6 Q. Do you know how many Promissory</p> <p>7 Notes were the subject of your first major</p> <p>8 agreement with the Dugaboy trustee?</p> <p>9 A. No.</p> <p>10 Q. Can you identify the maker of any</p> <p>11 Note that's subject to the first major</p> <p>12 agreement with the Dugaboy trustee?</p> <p>13 A. Not without my list or details.</p> <p>14 Q. Can you identify the principal</p> <p>15 amount of any Promissory Note that was subject</p> <p>16 to the first agreement that you entered into</p> <p>17 with the Dugaboy trustee?</p> <p>18 A. I know they were – I know the gross</p> <p>19 amount. I know they were some of the term</p> <p>20 loans, but I don't know the specifics.</p> <p>21 Q. Can you tell me the aggregate</p> <p>22 amount – withdrawn.</p> <p>23 Can you tell me the aggregate</p> <p>24 principal amount of the Notes that are the</p> <p>25 subject of your first agreement with the</p>	Page 21

<p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. I – I believe it was 30 – 30 some</p> <p>4 odd million, 30 – I can't remember the</p> <p>5 principal and interest, but it's only 30 – 34,</p> <p>6 35, 36. It was in that range.</p> <p>7 Q. Did your first agreement with the –</p> <p>8 withdrawn.</p> <p>9 Can you identify the date of any of</p> <p>10 the Promissory Notes that are the subject of</p> <p>11 your first agreement with the Dugaboy trustee?</p> <p>12 A. No.</p> <p>13 Q. Can you tell me the year that any of</p> <p>14 the Promissory Notes that are the subject of</p> <p>15 the – withdrawn.</p> <p>16 Can you tell me the year that any of</p> <p>17 the Promissory Notes were entered into that are</p> <p>18 the subject of your first agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 MS. DEITSCH-PEREZ: Asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: No, not off the top of</p> <p>23 my head.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. When did you – did – when did you</p>	Page 22	<p>1 JAMES DONDERO</p> <p>2 enter into the second agreement with the</p> <p>3 Dugaboy trustee?</p> <p>4 Was that in December of 2018 or</p> <p>5 early 2019?</p> <p>6 A. Yes.</p> <p>7 Q. How many Notes are subject to your</p> <p>8 second agreement with the Dugaboy trustee?</p> <p>9 A. Less than the first, but I don't</p> <p>10 know how many.</p> <p>11 Q. You don't know the number of Notes</p> <p>12 that are the subject of your second agreement</p> <p>13 with the Dugaboy trustee; is that right?</p> <p>14 A. Correct.</p> <p>15 Q. Can you identify the maker of any</p> <p>16 Notes that are the subject of your second</p> <p>17 agreement with the Dugaboy trustee?</p> <p>18 A. No, I – I – no, I don't remember.</p> <p>19 Q. Okay. So as you sit here right now,</p> <p>20 you can't identify the maker of any of the</p> <p>21 Notes that are the subject of the second</p> <p>22 agreement with the Dugaboy trustee; is that</p> <p>23 right?</p> <p>24 A. Well, it would be one of the three</p> <p>25 parties or four parties here, me or NexPoint or</p>	Page 23
<p>1 JAMES DONDERO</p> <p>2 whatever; but I don't remember –</p> <p>3 Q. Okay.</p> <p>4 A. – off the top of my head.</p> <p>5 Q. Off the top of your head, can you</p> <p>6 tell me the original principal amount of any</p> <p>7 Note that's subject to your second agreement</p> <p>8 with the Dugaboy trustee?</p> <p>9 A. No. I just – no.</p> <p>10 Q. Can you identify the date on which</p> <p>11 any of the Promissory Notes were executed that</p> <p>12 were the subject of your second agreement with</p> <p>13 the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you tell me the aggregate</p> <p>16 principal amount of the Notes that are the</p> <p>17 subject of your second agreement with the</p> <p>18 Dugaboy trustee?</p> <p>19 A. Yes. A fraction of the prior year.</p> <p>20 Less than ten million.</p> <p>21 Q. Can you be anymore precise than</p> <p>22 that?</p> <p>23 A. Approximately ten million, I think.</p> <p>24 Just under.</p> <p>25 Q. Okay. Did you enter into your third</p>	Page 24	<p>1 JAMES DONDERO</p> <p>2 agreement with the Dugaboy trustee in December</p> <p>3 2019 or early 2020?</p> <p>4 A. Yes.</p> <p>5 Q. That's after the petition date; do I</p> <p>6 have that right?</p> <p>7 A. I – yes.</p> <p>8 Q. Did you do it before or after</p> <p>9 January 9, 2020?</p> <p>10 A. Before, I believe.</p> <p>11 Q. So while you were still in control</p> <p>12 of Highland but after the petition date, you</p> <p>13 entered into your third agreement with the</p> <p>14 Dugaboy trustee concerning Promissory Notes.</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Did you ever inform the bankruptcy</p> <p>18 court of this agreement?</p> <p>19 A. No.</p> <p>20 Q. Did you ever inform the independent</p> <p>21 directors of this agreement that you entered</p> <p>22 into after the petition date?</p> <p>23 A. No.</p> <p>24 Q. Can you tell me which notes are the</p> <p>25 subject of your third agreement with the</p>	Page 25

<p>1 JAMES DONDERO</p> <p>2 Dugaboy trustee?</p> <p>3 A. No.</p> <p>4 Q. Can you identify the maker on any</p> <p>5 Note that's the subject of your agreement that</p> <p>6 you entered into after the petition date with</p> <p>7 the Dugaboy trustee?</p> <p>8 A. Not off the top of my head.</p> <p>9 MS. DEITSCH-PEREZ: I mean, John, if</p> <p>10 you would let him look at his list, he</p> <p>11 could tell you.</p> <p>12 But if you insist on making this a</p> <p>13 memory test of 18 or so different things or</p> <p>14 however many there are, 13, 14, then this</p> <p>15 is – it's your deposition. But if you</p> <p>16 want more specific details, he could look</p> <p>17 at the list.</p> <p>18 MR. MORRIS: Okay. That's not even</p> <p>19 an objection let alone a speaking</p> <p>20 objection.</p> <p>21 It is my deposition –</p> <p>22 MS. DEITSCH-PEREZ: No.</p> <p>23 MR. MORRIS: It is my deposition,</p> <p>24 and I would appreciate your not making</p> <p>25 gratuitous comments.</p>	Page 26	<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, can you tell me the</p> <p>4 aggregate value of the Notes that are the</p> <p>5 subject of the third agreement that you entered</p> <p>6 into with the Dugaboy trustee after the</p> <p>7 petition date?</p> <p>8 A. I believe it was about a million</p> <p>9 bucks.</p> <p>10 Q. And who were the makers of the Notes</p> <p>11 that are the subject of the agreement with the</p> <p>12 Dugaboy trustee that you entered into after the</p> <p>13 petition date?</p> <p>14 A. I don't know.</p> <p>15 Q. Without the sheet that you looked at</p> <p>16 earlier, you have no ability to tell me which</p> <p>17 notes were the subject of which agreement that</p> <p>18 you entered into with the Dugaboy trustee,</p> <p>19 correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: If I'm not certain off</p> <p>23 the top of my head I can remember</p> <p>24 accurately, I don't want to speculate.</p> <p>25</p>	Page 27
<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. I don't want you to</p> <p>4 speculate either. So I'm going to ask you just</p> <p>5 broad follow-up questions.</p> <p>6 Can you identify any Promissory Note</p> <p>7 that is the subject of any specific agreement</p> <p>8 that you ever entered into with the Dugaboy</p> <p>9 trustee without looking at the list?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form. He's already done that to some</p> <p>12 degree.</p> <p>13 THE WITNESS: I believe it covered</p> <p>14 virtually all of them. So I don't remember</p> <p>15 which ones specifically in each year.</p> <p>16 Generally, it was, I believe, the</p> <p>17 ones incurred in that year; but I don't</p> <p>18 remember which entities. But again, the</p> <p>19 ultimate result being that the term loans,</p> <p>20 the demand notes, the things incurred, the</p> <p>21 things outstanding were part of the</p> <p>22 agreement.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Sir, you never wrote down a list of</p> <p>25 the notes that are the subject of the</p>	Page 28	<p>1 JAMES DONDERO</p> <p>2 agreements, correct?</p> <p>3 A. Correct.</p> <p>4 Q. You never asked anybody to make a</p> <p>5 list of the notes that were the subject of each</p> <p>6 of the agreements, correct?</p> <p>7 A. Correct.</p> <p>8 Q. You're not aware of any document</p> <p>9 that was created prior to the commencement of</p> <p>10 these lawsuits that identifies the Notes that</p> <p>11 are the subject of the agreements, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Other than the Promissory Notes that</p> <p>14 are the subject of this lawsuit – withdrawn.</p> <p>15 Other than the Promissory Notes that</p> <p>16 are the subject of these lawsuits, are you</p> <p>17 aware of any other doc – Promissory Notes</p> <p>18 that are the subject of an agreement with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I believe there are from time to</p> <p>21 time, yes. But I – I don't know off the top</p> <p>22 of my head.</p> <p>23 Q. Can you identify the maker of any</p> <p>24 Promissory Note that is the subject of any</p> <p>25 agreement with the Dugaboy trustee other than</p>	Page 29

<p>1 JAMES DONDERO</p> <p>2 the Promissory Notes that are the subject of</p> <p>3 the pending lawsuits?</p> <p>4 A. Not specifically, but I believe</p> <p>5 there are.</p> <p>6 Q. Okay. Can you identify the</p> <p>7 principal amount of any Promissory Note that is</p> <p>8 the subject of an agreement with the Dugaboy</p> <p>9 trustee that is not part of the pending</p> <p>10 lawsuits?</p> <p>11 A. Not specifically.</p> <p>12 Q. Can you tell me the year in which</p> <p>13 any Promissory Note was ever executed that is</p> <p>14 the subject of any agreement with the Dugaboy</p> <p>15 trustee other than the Promissory Notes that</p> <p>16 are the subject of the pending lawsuits?</p> <p>17 A. I believe there were several, and I</p> <p>18 believe there were numerous ones over the</p> <p>19 years.</p> <p>20 Q. Okay. And – and are those</p> <p>21 Promissory Notes subject to one of the three</p> <p>22 agreements that we've identified or subject to</p> <p>23 some other agreement with the Dugaboy trustee?</p> <p>24 A. Well, they weren't to these related</p> <p>25 entities. I – I don't know what the</p>	Page 30	<p>1 JAMES DONDERO</p> <p>2 agreements were specifically subject to.</p> <p>3 Q. Are you the person who entered into</p> <p>4 the agreement with the Dugaboy trustee</p> <p>5 concerning the notes that you are describing</p> <p>6 right now?</p> <p>7 A. Yes, I guess.</p> <p>8 Q. As the person who entered into the</p> <p>9 agreement with the Dugaboy trustee concerning</p> <p>10 Notes that are not the subject of the pending</p> <p>11 litigation, can you identify anything about</p> <p>12 those Notes, whether it's the maker, the date,</p> <p>13 the principal amount, anything at all?</p> <p>14 A. Not off the top of my head.</p> <p>15 Q. Okay. What would – what would you</p> <p>16 have to look at to know? The chart or</p> <p>17 something else?</p> <p>18 A. No, not this – not this chart.</p> <p>19 This only has to do with what we thought this</p> <p>20 deposition was going to be about.</p> <p>21 It would be the financials of</p> <p>22 Dugaboy; and then from there, the detail</p> <p>23 regarding any Notes that it has.</p> <p>24 Q. Did you enter into an agreement with</p> <p>25 the Dugaboy trustee to forgive a Promissory</p>	Page 31
<p>1 JAMES DONDERO</p> <p>2 Note where Dugaboy is the maker and Highland is</p> <p>3 the payee?</p> <p>4 A. Dugaboy – can you repeat that</p> <p>5 question one more time?</p> <p>6 Q. Sure. Did you enter into an</p> <p>7 agreement with the Dugaboy trustee relating to</p> <p>8 any Promissory Note where Dugaboy is the maker?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Okay. So you don't have any</p> <p>11 recollection of ever entering into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note that was made</p> <p>14 by Dugaboy, correct?</p> <p>15 A. I – I do not believe so.</p> <p>16 Q. Okay. And is there a – is there a</p> <p>17 document that we could look at that would</p> <p>18 refresh your recollection?</p> <p>19 A. Not beyond the financials of Dugaboy</p> <p>20 and any relevant Note detail.</p> <p>21 Q. And would – is it – is it your</p> <p>22 testimony that an agreement with Dugaboy would</p> <p>23 be reflected in the Dugaboy financial</p> <p>24 statements?</p> <p>25 A. No, but the Notes would be.</p>	Page 32	<p>1 JAMES DONDERO</p> <p>2 Q. Well, the Dugaboy Notes are</p> <p>3 reflected in Highland's financial statements.</p> <p>4 Do you want me to get that?</p> <p>5 A. No. I didn't think that was – I</p> <p>6 didn't think that was the question you were</p> <p>7 asking me.</p> <p>8 Q. I apologize. Maybe it was my fault.</p> <p>9 What would we have to look at in</p> <p>10 order to refresh your recollection as to</p> <p>11 whether or not you entered into an agreement</p> <p>12 with the Dugaboy trustee concerning the</p> <p>13 potential forgiveness of any Note made by</p> <p>14 Dugaboy?</p> <p>15 A. Other than the ones we're talking</p> <p>16 about today, right?</p> <p>17 Q. We're not talking about – there's</p> <p>18 no Promissory Note where Dugaboy is the maker</p> <p>19 that is the subject of any of the pending</p> <p>20 lawsuits, correct?</p> <p>21 A. Correct.</p> <p>22 Q. So I'm asking you to identify if you</p> <p>23 can any Promissory Note that is the subject of</p> <p>24 any agreement you have ever entered into with</p> <p>25 the Dugaboy trustee that is not the subject of</p>	Page 33

<p>1 JAMES DONDERO 2 one of the pending lawsuits. 3 Do you understand that that's what 4 I'm trying to get at? 5 MS. DEITSCH-PEREZ: Asked and 6 answered. 7 THE WITNESS: Yes. 8 BY MR. MORRIS: 9 Q. Okay. Can you identify any such 10 Promissory Note? 11 A. No, not specifically as I sit here 12 today. 13 Q. Okay. Other than the promissory – 14 withdrawn. 15 Are you familiar with the term 16 "majority interest" as used in the Highland 17 Limited Partnership Agreement? 18 A. Yes. 19 Q. Okay. Other than the Promissory 20 Notes that are the subject of the pending 21 lawsuits, are you aware of any other Promissory 22 Notes that are the subject of any agreement 23 with the majority interest? 24 MS. DEITSCH-PEREZ: Object to the 25 form. Asked and answered.</p>	Page 34	<p>1 JAMES DONDERO 2 THE WITNESS: The majority interest 3 is controlled by the 75 percent. It's 4 controlled by Dugaboy. But the majority 5 interest isn't an entity in and of itself, 6 right? 7 BY MR. MORRIS: 8 Q. Okay. Has Dugaboy held the majority 9 interest since the time that Highland was 10 created? 11 A. No. 12 Q. Okay. So – so then I'm going to 13 ask my question again. 14 Are you aware of any agreement 15 concerning any Promissory Note that is the 16 subject – withdrawn. 17 Are you aware of any agreement with 18 the majority interest that concerns any 19 Promissory Note where Highland is the payee 20 other than the Notes that are the subject of 21 the pending lawsuit? 22 MS. DEITSCH-PEREZ: Asked and 23 answered. 24 THE WITNESS: Not specifically as I 25 sit here today, but I do believe there have</p>	Page 35
<p>1 JAMES DONDERO 2 been numerous notes other than to these 3 entities today where Dugaboy was the maker 4 or recipient or whatever. 5 BY MR. MORRIS: 6 Q. So you do believe that Dugaboy was 7 the maker of a Promissory Note that's subject 8 to an agreement with the majority interest? 9 MS. DEITSCH-PEREZ: Object to the 10 form. 11 THE WITNESS: What I'm saying is I 12 believe Dugaboy had other – made other 13 Notes and received other Notes from other 14 entities other than Highland. 15 BY MR. MORRIS: 16 Q. Does that have anything to do with 17 Highland? 18 Maybe I wasn't clear. I'm using the 19 phrase "majority interest" as that phrase – I 20 thought we had – I thought we had an 21 understanding – as that phrase is used in the 22 Highland Limited Partnership Agreement, right? 23 A. I thought it was a definition term 24 in the Highland, L.P. 25 Q. It is, and I just – I'd like to</p>	Page 36	<p>1 JAMES DONDERO 2 move on if I can, but I just want some clarity 3 here. 4 Is there any agreement between 5 Dugaboy and the majority interest concerning 6 any Promissory Note where Dugaboy is the maker? 7 MS. DEITSCH-PEREZ: Object to the 8 form. 9 THE WITNESS: I – I don't know what 10 you're getting at. I have a tried to 11 answer it the best I can several different 12 ways. 13 But try it one more time, and I'll 14 try and answer it just specifically yes or 15 no. 16 BY MR. MORRIS: 17 Q. Okay. Is Dugaboy the maker on any 18 Promissory Note where Highland is the payee? 19 A. I don't believe so at this point. 20 Q. Was Dugaboy ever the maker on a Note 21 where Highland was the payee to the best of 22 your knowledge? 23 A. I don't – I just don't know what 24 the actual accounting was or could have or 25 should have been. But if it prepays a Note,</p>	Page 37

<p>1 JAMES DONDERO</p> <p>2 instead of prepaying a Note, it could have left</p> <p>3 it in an existing Note outstanding and then</p> <p>4 issued a separate Note, right, instead of</p> <p>5 prepaying, right?</p> <p>6 So I don't know in the – in the pas</p> <p>7 past or how exactly they handled prepay</p> <p>8 consistently over time. But at the moment, I</p> <p>9 don't believe there's a loan going from Dugaboy</p> <p>10 to Highland.</p> <p>11 But I do believe over the years,</p> <p>12 there were numerous loans from Dugaboy to other</p> <p>13 entities other than the ones we're talking</p> <p>14 about today.</p> <p>15 MS. DEITSCH-PEREZ: Okay. John,</p> <p>16 we've gone way far afield of the topics for</p> <p>17 this deposition or anything that you ought</p> <p>18 to be even asking this individual witness</p> <p>19 about given what these litigations are.</p> <p>20 Could we move on, please?</p> <p>21 MR. MORRIS: No. Other than –</p> <p>22 MS. DEITSCH-PEREZ: You're spending</p> <p>23 time on things other than the –</p> <p>24 MR. MORRIS: Please stop talking.</p> <p>25 MS. DEITSCH-PEREZ: – action.</p>	Page 38	<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: Please stop talking.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Other than the Promissory Notes that</p> <p>5 are the subject of the lawsuits, are you aware</p> <p>6 of any other Promissory Notes that are the</p> <p>7 subject of any agreement that the Dugaboy</p> <p>8 trustee ever entered into as a representative</p> <p>9 of the majority of Class A shareholders?</p> <p>10 MS. DEITSCH-PEREZ: Asked and</p> <p>11 answered. I think we've answered after the</p> <p>12 sixth time.</p> <p>13 THE WITNESS: Not as I sit here</p> <p>14 today.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. In paragraph 82 in about the fifth</p> <p>17 line down, there's a statement that, quote,</p> <p>18 "Nancy Dondero is representative for a majority</p> <p>19 of the Class A holders of plaintiff, agree that</p> <p>20 plaintiff would forgive the Notes."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. The word "plaintiff" as used in your</p> <p>24 answer refers to Highland Capital Management,</p> <p>25 L.P., correct?</p>	Page 39
<p>1 JAMES DONDERO</p> <p>2 A. I – no – or wait. Hold on a</p> <p>3 second.</p> <p>4 Yes. I guess, yes.</p> <p>5 Q. Okay. At the time you entered into</p> <p>6 the agreements, did you understand that</p> <p>7 Dugaboy, as a majority – as a representative</p> <p>8 of a majority of the Class A shareholders of</p> <p>9 the plaintiff was the entity that entered into</p> <p>10 the agreement on behalf of Highland?</p> <p>11 A. Yes.</p> <p>12 Q. And your sister Nancy is the trustee</p> <p>13 of Dugaboy today, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Nancy was the trustee of Dugaboy</p> <p>16 at the time you entered into each of the</p> <p>17 agreements, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And you knew that at the time you</p> <p>20 entered each of the agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. You knew she was acting on behalf of</p> <p>23 Dugaboy, correct?</p> <p>24 A. Yes.</p> <p>25 Q. Your understanding at that time that</p>	Page 40	<p>1 JAMES DONDERO</p> <p>2 you entered into each of the agreements with</p> <p>3 the Dugaboy trustee was that Dugaboy held the</p> <p>4 majority of Highland's Class A interest,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that's exactly why you contacted</p> <p>8 Nancy to discuss the topics that ultimately led</p> <p>9 to the agreements, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You specifically called Nancy</p> <p>12 because you wanted her to cause Dugaboy to</p> <p>13 enter into the agreements with you on behalf of</p> <p>14 Highland, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And just as you wanted, Nancy, in</p> <p>17 fact, caused Dugaboy, as a representative of a</p> <p>18 majority of the Class A shareholders of</p> <p>19 plaintiff, to enter into each of the</p> <p>20 agreements, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Would you agree with me that the</p> <p>23 Promissory Notes that are the subject of the</p> <p>24 agreements were the debtor's property?</p> <p>25 A. I think I've stated numerous times</p>	Page 41

<p>1 JAMES DONDERO</p> <p>2 due to them as that they would ultimately be</p> <p>3 compensation; but to be a bona fide Note and to</p> <p>4 have bona fide deferral at the time that they</p> <p>5 were issued, they were the debtor's property.</p> <p>6 And I guess they remained such until satisfied</p> <p>7 or until the condition as present – the</p> <p>8 condition subsequent is either triggered or</p> <p>9 impossible to be triggered.</p> <p>10 Q. Okay. Is it fair to say that the</p> <p>11 Promissory Notes that are the subject of the</p> <p>12 agreements were assets of the debtor at the</p> <p>13 time you entered into the agreements?</p> <p>14 A. Yes.</p> <p>15 Q. At the time you entered into the</p> <p>16 agreements, you understood that Dugaboy was</p> <p>17 exercising control over the debtor's property,</p> <p>18 correct?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 MR. MORRIS: Withdrawn.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. At the time you entered into the</p> <p>24 agreements, you understood that the Dugaboy</p> <p>25 trustee was going to exercise control over the</p>	Page 42	<p>1 JAMES DONDERO</p> <p>2 debtor's property, correct?</p> <p>3 MS. DEITSCH-PEREZ: Object. Object</p> <p>4 to the form.</p> <p>5 THE WITNESS: Exercise control? I</p> <p>6 understood the trustee had the ability to</p> <p>7 grant the, whatever you want to call them,</p> <p>8 conditions subsequent.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. On that –</p> <p>11 A. Yes.</p> <p>12 Q. And that was – by entering into the</p> <p>13 agreement, would you agree with me, that the</p> <p>14 Dugaboy trustee exercised control over the</p> <p>15 Promissory Notes?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: They – The trustee</p> <p>19 exercised the rights given to it as a</p> <p>20 majority of Class A holders.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. And is it your understanding</p> <p>23 that as part of the right, it altered the</p> <p>24 characteristics of the Promissory Notes?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	Page 43
<p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: I just want to – I</p> <p>4 believe my testimony, I granted the</p> <p>5 conditions subsequent is my interpretation.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Right. And so that's fine. But</p> <p>8 that's – that's the thing that happened, but</p> <p>9 I'm just asking you what the impact of that</p> <p>10 was.</p> <p>11 When the Dugaboy trustee entered</p> <p>12 into the agreement, the result was that the</p> <p>13 terms and conditions of the Promissory Note</p> <p>14 were altered, correct?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I don't want to – I</p> <p>18 want to say I don't know to that next week.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You can't – okay. You can't tell</p> <p>21 me if your agreement with the Dugaboy trustee</p> <p>22 altered the terms and conditions of the</p> <p>23 Promissory Notes that were subject to the</p> <p>24 agreement; you can't tell me that?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	Page 44	<p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 THE WITNESS: Yeah. I – again, it</p> <p>4 sounds like you're trying to take me</p> <p>5 towards legal terms of changing terms or</p> <p>6 modification in a Note or whatever; and</p> <p>7 I – I'm not – I don't have an opinion or</p> <p>8 the expert to comment on that.</p> <p>9 I can just say I knew she had the</p> <p>10 ability to create conditions subsequent.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. So let's take, for example,</p> <p>13 the Notes that you signed.</p> <p>14 Those were demand notes, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And after you entered into</p> <p>17 the agreement with the Dugaboy trustee, instead</p> <p>18 of it being a demand note, it was now a demand</p> <p>19 note subject to conditions subsequent, correct?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: Yeah, that ultimately</p> <p>23 they couldn't be demanded until conditions</p> <p>24 subsequent were met or unable to be met.</p> <p>25</p>	Page 45

<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. So can you agree with me that</p> <p>4 that – that that was a change in the term of</p> <p>5 the Note?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yeah. See, that's the</p> <p>9 part I don't want to comment on. I just</p> <p>10 want to say I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Wasn't that the purpose of</p> <p>13 entering into the agreements was to change the</p> <p>14 terms of the each of the Promissory Notes?</p> <p>15 Wasn't that your intent?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 THE WITNESS: I'd say the intent was</p> <p>19 to find and make compensation appropriate</p> <p>20 for industry standards and Highland in</p> <p>21 particular.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And did you believe that the Notes</p> <p>24 as originally drafted and signed by you or the</p> <p>25 representatives of the makers didn't take that</p>	Page 46	<p>1 JAMES DONDERO</p> <p>2 into account?</p> <p>3 A. I went through this already last</p> <p>4 time, but the Notes were intentionally loose</p> <p>5 and, I think, anticipated the ability to adjust</p> <p>6 the subsequent conditions or other things.</p> <p>7 Q. Now, you told me that each of the</p> <p>8 agreements was entered into between December of</p> <p>9 one year or – actually, withdrawn.</p> <p>10 If we look at paragraph 82, it says</p> <p>11 that each of the agreements was made, quote,</p> <p>12 "sometime between the December of the year in</p> <p>13 which each note was made and February of the</p> <p>14 following year."</p> <p>15 Do I have that right?</p> <p>16 A. Yes.</p> <p>17 Q. Can you identify with any greater</p> <p>18 specificity when you entered into the first</p> <p>19 agreement with the Dugaboy trustee referenced</p> <p>20 in paragraph 82?</p> <p>21 A. No.</p> <p>22 Q. It's sometime within that 90-day</p> <p>23 period; does that sound right to you?</p> <p>24 A. I believe it was closer to the</p> <p>25 holidays around the turn of the year, but I</p>	Page 47
<p>1 JAMES DONDERO</p> <p>2 don't have specific recollection.</p> <p>3 Q. Is that answer the same for all</p> <p>4 three agreements or only for the first</p> <p>5 agreement?</p> <p>6 A. That would be the same for all</p> <p>7 three.</p> <p>8 Q. So then why – why does paragraph 82</p> <p>9 refer to sometime between December of the year</p> <p>10 in which each note was made and February of the</p> <p>11 following year if your best recollection is</p> <p>12 that it happened around the holidays?</p> <p>13 A. I don't know.</p> <p>14 Q. All right. But as you sit here</p> <p>15 right now, is it your testimony that you</p> <p>16 believe each of the agreements was signed –</p> <p>17 was more likely signed in December rather than</p> <p>18 January or February?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I think signed is a –</p> <p>22 I'm not – I'm not testifying that signed,</p> <p>23 I guess.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. I apologize. Maybe that was my</p>	Page 48	<p>1 JAMES DONDERO</p> <p>2 mistake.</p> <p>3 Is it your testimony that each –</p> <p>4 that you entered each of the agreements with</p> <p>5 the Dugaboy trustee in December rather than</p> <p>6 January or February of the years indicated?</p> <p>7 A. That's the best of my recollection,</p> <p>8 but there may have been one year that was</p> <p>9 towards the wider end of the interval. I can't</p> <p>10 remember with more specificity.</p> <p>11 Q. Okay. Do you know of anything that</p> <p>12 memorialized the date on which you entered into</p> <p>13 any of the agreements?</p> <p>14 A. No, other than – no, other than –</p> <p>15 no, other than, you know, other than travel</p> <p>16 schedule or phone logs or whatever.</p> <p>17 Q. All right. During the discussion</p> <p>18 that led to the agreements, did you ever</p> <p>19 provide any information to Nancy or to Dugaboy</p> <p>20 concerning your compensation?</p> <p>21 A. Just – just verbal. I mean, she</p> <p>22 knew it was low, and she knew we had reinvested</p> <p>23 most everything we made back in the company</p> <p>24 over the years. And that was the – that was,</p> <p>25 I think, understanding by all involved; and it</p>	Page 49

<p>1 JAMES DONDERO 2 should be obvious to anybody who's looked at 3 the numbers even in hindsight. 4 MR. MORRIS: Okay. I move to 5 strike. 6 BY MR. MORRIS: 7 Q. And please listen carefully to my 8 question. 9 During the discussions that led to 10 each of the agreements, did you ever provide 11 any information to your sister or Dugaboy 12 concerning your compensation? 13 MS. DEITSCH-PEREZ: Asked and 14 answered. 15 THE WITNESS: Not specifically. 16 BY MR. MORRIS: 17 Q. Did you provide any general 18 information to your sister or to Dugaboy prior 19 to the entry of any of the three agreements 20 that you entered into with the Dugaboy trustee? 21 A. I would repeat the answer that was 22 struck two questions ago. 23 Q. That's the information that you gave 24 to her? 25 A. Yeah. It was – again, it was </p>	Page 50	<p>1 JAMES DONDERO 2 verbal, and it was – but an understanding but 3 a clear and obvious understanding. 4 Q. I want to know exactly what 5 information you gave to your sister and to 6 Dugaboy before entering into any of the three 7 agreements with the Dugaboy trustee? 8 A. Most of what I had made over the 9 years was rolled back into the business to 10 propel growth and initiatives. And that my 11 actual compensation was very modest based on 12 industry standards and relevant 13 responsibilities at Highland. 14 Q. Did you tell her anything else? 15 Withdrawn. 16 Did you tell your – Nancy or 17 Dugaboy anything else beyond what you've now 18 testified to? 19 A. You know, I think some of what I 20 testified to earlier, that forgiveness of the 21 Notes would be a modest increase in that 22 compensation but still not be in the ZIP code 23 of fair and appropriate compensation and that 24 the value of the Notes in aggregate were de 25 minimus relative to Highland and de minimis </p>	Page 51
<p>1 JAMES DONDERO 2 relative to Dugaboy. 3 Q. Did you tell her anything else? 4 A. Anything else would have fallen into 5 the buckets I just described, but I can't 6 remember specifically as I sit here today. 7 Q. Did you ever tell your sister or 8 Dugaboy that your salary was less than a 9 million dollars? 10 A. I – 11 MS. DEITSCH-PEREZ: I mean, just 12 from Highland? 13 THE WITNESS: Repeat the question 14 again for me, please. 15 BY MR. MORRIS: 16 Q. Did you ever tell your sister that 17 your salary was less than a million dollars a 18 year? 19 A. I know my sister was aware that it 20 was very low, and it kind of decreased over 21 time, and I think it was paid by different 22 entities. 23 Whether it was a million or 24 2 million, I can't remember exactly what I 25 would have told her; but it would have been in </p>	Page 52	<p>1 JAMES DONDERO 2 that ZIP code to paint the proper picture that 3 the cash compensation for somebody in my role 4 was well below industry standards. 5 Q. Do you recall anything else that you 6 shared with your sister concerning your 7 compensation that you haven't testified to? 8 A. Like I said, it would generally fall 9 into those buckets as I sit here today. 10 Q. Did your sister or Dugaboy ask you 11 any questions about your compensation before 12 entering into the three agreements that you 13 entered into with the Dugaboy trustee? 14 A. And, again, it would fall into the 15 buckets I just described. 16 Q. Can you – can you recall any 17 question that your sister or Dugaboy asked of 18 you concerning your compensation before 19 entering into the agreements? 20 MS. DEITSCH-PEREZ: Asked answered. 21 THE WITNESS: Again, I – it would 22 fall into the buckets I just described. 23 BY MR. MORRIS: 24 Q. Did you provide any documents to 25 your sister or to Dugaboy concerning your </p>	Page 53

<p>1 JAMES DONDERO</p> <p>2 compensation before entering into the</p> <p>3 agreements?</p> <p>4 A. No, not that I can recall.</p> <p>5 Q. Did your sister or Dugaboy ask you</p> <p>6 for any documents before entering into – into</p> <p>7 any of the agreements?</p> <p>8 A. I do not – I do not believe so.</p> <p>9 Q. Do you recall that in the ordinary</p> <p>10 course of business, Highland prepared a</p> <p>11 document called a Compensation and Benefits</p> <p>12 Statement for each of its employees?</p> <p>13 A. Yes.</p> <p>14 Q. And was that prepared by the Human</p> <p>15 Resources Group?</p> <p>16 A. Yes.</p> <p>17 Q. And was Mark Collins the head of the</p> <p>18 Human Resources Group?</p> <p>19 A. No.</p> <p>20 Q. Who was the head of the Human</p> <p>21 Resources Group?</p> <p>22 A. Brian Collins.</p> <p>23 Q. I apologize to Mr. Collins. Thank</p> <p>24 you for the correction.</p> <p>25 And Mr. Collins and his team were</p>	Page 54	<p>1 JAMES DONDERO</p> <p>2 responsible for preparing the annual</p> <p>3 Compensation and Benefits Statements for</p> <p>4 Highland's employees, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And did you instruct them to do</p> <p>7 that?</p> <p>8 A. Not specifically.</p> <p>9 Q. Okay.</p> <p>10 A. They do it every year. They do it</p> <p>11 every year as a matter of course, so I guess no</p> <p>12 is the answer.</p> <p>13 Q. Okay. So in the ordinary course of</p> <p>14 business, Mr. Collins and his team would</p> <p>15 prepare Compensation and Benefits Statements</p> <p>16 for each of Highland's employees on an annual</p> <p>17 basis, right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we please put up</p> <p>21 Exhibit 68.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23</p> <p>24</p> <p>25</p>	Page 55
<p>1 JAMES DONDERO</p> <p>2 (Whereupon, Exhibit 68, James</p> <p>3 Dondero Compensation and Benefits</p> <p>4 Statement, Bates stamped D-CNL003585,</p> <p>5 marked for identification, as of this</p> <p>6 date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Do you see the document that's been</p> <p>9 premarked as Exhibit 68 that's up on the</p> <p>10 screen, sir?</p> <p>11 A. Yup.</p> <p>12 Q. And does this appear to be the form</p> <p>13 of annual Compensation and Benefits Statement</p> <p>14 that Mr. Collins and his team prepared on an</p> <p>15 annual basis for Highland's employees?</p> <p>16 A. This looks like the format, yes.</p> <p>17 Q. Okay. And the Compensation and</p> <p>18 Benefits Statement was intended to set forth</p> <p>19 the types and the amounts of compensation each</p> <p>20 employee received each year, correct?</p> <p>21 A. Yes, generally.</p> <p>22 Q. Okay. Did you ever disclose any</p> <p>23 information on this page to Nancy or to</p> <p>24 Dugaboy?</p> <p>25 A. Honestly, I don't think I've ever</p>	Page 56	<p>1 JAMES DONDERO</p> <p>2 seen my award letters before.</p> <p>3 Q. Okay. So you never – so then it's</p> <p>4 a fair to say you never showed this letter to</p> <p>5 your sister or to Dugaboy, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Did you ever disclose to</p> <p>8 Nancy or to Dugaboy the salary that's reflected</p> <p>9 on this document?</p> <p>10 A. I can't remember specifically beyond</p> <p>11 what I've already testified.</p> <p>12 Q. Did you ever describe for Nancy or</p> <p>13 for Dugaboy the 2016 deferred compensation</p> <p>14 award that's reflected on this document?</p> <p>15 A. No. I – by the way, I think that's</p> <p>16 only 20 percent vested a year. I think that's</p> <p>17 a gross amount. But no, I never – I never</p> <p>18 discussed that with her.</p> <p>19 Q. Okay. Do you see in the</p> <p>20 compensation award refers to 50,000 restricted</p> <p>21 stock units of NXRT relating to your 2016</p> <p>22 performance?</p> <p>23 A. Yes.</p> <p>24 Q. What is NXRT?</p> <p>25 A. That's the REIT that Highland used</p>	Page 57

<p>1 JAMES DONDERO</p> <p>2 to own million shares of that series hold at 20</p> <p>3 that now trade at 70.</p> <p>4 Q. And is NexPoint REIT affiliated with</p> <p>5 NexPoint Advisors, L.P.?</p> <p>6 A. Yes.</p> <p>7 Q. And do you have an understanding of</p> <p>8 the nature of the relationship?</p> <p>9 A. Yes.</p> <p>10 Q. And what's – what's your</p> <p>11 understanding of the nature of the relationship</p> <p>12 between NexPoint REIT and NexPoint Advisors,</p> <p>13 L.P.?</p> <p>14 A. It's the external manager of the</p> <p>15 REIT.</p> <p>16 Q. Okay. Did you ever tell Nancy or</p> <p>17 Dugaboy that you had received these restricted</p> <p>18 stock units in 2016?</p> <p>19 A. No. But again, the vested amount</p> <p>20 would have probably been about \$250,000 worth</p> <p>21 at that moment.</p> <p>22 Q. And did it vest over a couple of</p> <p>23 years?</p> <p>24 A. The first couple of years is vested</p> <p>25 over five years. I think now it vests over six</p>	Page 58	<p>1 JAMES DONDERO</p> <p>2 or seven years. I don't remember whether the</p> <p>3 2016 award was five years, six years, or seven</p> <p>4 years.</p> <p>5 Q. Okay. We talked earlier about an</p> <p>6 expert that's been retained on your behalf.</p> <p>7 Do you remember that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall if you or anybody</p> <p>10 acting on your behalf ever disclosed to that</p> <p>11 expert the restricted stock units reflected on</p> <p>12 this document?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 MR. MORRIS: Let's put up</p> <p>17 Exhibit 50, please.</p> <p>18 MS. CANTY: (Complies with request.)</p> <p>19 (Whereupon, Exhibit 50, James</p> <p>20 Dondero Compensation and Benefits</p> <p>21 Statement, Bates stamped D-CNL003587,</p> <p>22 marked for identification, as of this</p> <p>23 date.)</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you see this is your benefits</p>	Page 59
<p>1 JAMES DONDERO</p> <p>2 statement for 2017?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever disclose any of the</p> <p>5 information on this page to Nancy or to</p> <p>6 Dugaboy?</p> <p>7 A. No.</p> <p>8 Q. Did you ever disclose to Nancy or to</p> <p>9 Dugaboy that your base salary in 2017 was.</p> <p>10 2,500,024?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: Not specifically, no,</p> <p>14 other than the buckets we talked about</p> <p>15 earlier.</p> <p>16 Like I said earlier, I'm not sure if</p> <p>17 I have ever seen these before. But I also</p> <p>18 – until it's verified, I don't want to –</p> <p>19 everybody to assume that the base salary</p> <p>20 came a hundred percent from Highland or if</p> <p>21 it was also from some other entity.</p> <p>22 Because for the purposes of this letter,</p> <p>23 Brian Collins wouldn't have – we have</p> <p>24 numerous or several employees that are dual</p> <p>25 employees. And whether their base salary</p>	Page 60	<p>1 JAMES DONDERO</p> <p>2 came from one or multiple entities, he</p> <p>3 wouldn't have differentiated in that line.</p> <p>4 So I don't know whether that amount,</p> <p>5 that 2.5 million came from Highland or a</p> <p>6 combination of Highland/NexPoint or some</p> <p>7 other entities. I don't know.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And who made the decision as to how</p> <p>10 to allocate the base salary?</p> <p>11 A. I don't know. I – I mean, I don't</p> <p>12 know how it was split. But my recollection of</p> <p>13 my Highland base salary is that it was</p> <p>14 diminishing over time.</p> <p>15 Q. And – and as the president of</p> <p>16 Highland and as the president of NexPoint, did</p> <p>17 you have any say as to how your salary was</p> <p>18 allocated between those two entities?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you have any idea the basis on</p> <p>21 which your salary was allocated between those</p> <p>22 two entities?</p> <p>23 A. No.</p> <p>24 Q. Do you think – do – do you have</p> <p>25 any understanding that it was allocated based</p>	Page 61

<p>1 JAMES DONDERO 2 on the amount of time you spent working for 3 each of those entities? 4 A. I have no idea. 5 Q. If your salary was \$500,000 from 6 Highland in 2017 and \$2 million to NexPoint, 7 can you – can you think of any reason why it 8 would be allocated in that way? 9 MS. DEITSCH-PEREZ: Object to the 10 form. 11 THE WITNESS: Cash, cash 12 availability. I – I don't know. 13 BY MR. MORRIS: 14 Q. Okay. Did you devote your full time 15 and attention to Highland Capital Management, 16 L.P.? 17 A. I spread my time as appropriate 18 across a variety of entities. 19 Q. Can you identify for me the entities 20 that you spread your time across? 21 A. Highland, NexPoint, HCMFA, HCRE. 22 Q. How about Highland Management 23 Services, Inc.? 24 A. Yes. 25 Q. Are there any others?</p>	<p>Page 62</p> <p>1 JAMES DONDERO 2 A. Yes. 3 Q. Can you identify any other companies 4 to which you devoted your time and attention? 5 A. Not off the top of my head. I'm 6 willing to be refreshed. But over the years 7 there's been multiple initiatives at Highland 8 that have come and gone and private equity 9 companies that have come and gone and other 10 initiatives that have come and gone. 11 Q. Do you see the reference to the 12 65,772 restricted stock units of the NexPoint 13 REIT there on this document? 14 A. Yes. 15 Q. And was that, to the best of your 16 recollection, the award that you were granted 17 in connection with your 2017 performance? 18 A. It would have been for – it would 19 have been the prior awards at – it would have 20 been for the prior years' awards at NFLP. And 21 it would have been – it would have been the 22 same five- or seven-year vesting schedule. 23 MR. MORRIS: Now I'm looking at my 24 phone, and I don't see, Deborah, any e-mail 25 from your firm.</p>
<p>1 JAMES DONDERO 2 MS. DEITSCH-PEREZ: Yeah. On a 3 break, I'll take a picture of it and send 4 it to you. 5 Do you want a break now? 6 MR. MORRIS: I really – I really 7 don't. And I don't know why I can't get an 8 e-mail copy rather than a photograph. It's 9 not going to be – it's not going to be 10 easy to read, and you know that? 11 MS. DEITSCH-PEREZ: It'll be 12 perfectly fine. If you can't, let me know; 13 and then I'll take the time to try and find 14 it. But the fastest way to get it to you 15 is to take a picture of it. 16 BY MR. MORRIS: 17 Q. Mr. Dondero, did you ever tell Nancy 18 or Dugaboy that you had received the restricted 19 stock units from the NexPoint REIT as reflected 20 on this page? 21 A. You're – you're saying the 22 \$1.55-million number that was really 200,000 23 vested or 300,000 vested? 24 Q. No. I'm not talking about the 25 value. I'm just talking about the restricted</p>	<p>Page 64</p> <p>1 JAMES DONDERO 2 units. 3 Did you ever tell them – let's keep 4 it – let's keep it simple, and let's make it 5 really broad. 6 Did you ever tell Nancy or Dugaboy 7 that you received restricted stock units as 8 part of your compensation? 9 A. I – I don't remember. 10 Q. Okay. Did you ever – because this 11 will speed it up. 12 Did you ever tell your expert that 13 you received restricted stock units as part of 14 your compensation? 15 MS. DEITSCH-PEREZ: Object to the 16 form. 17 THE WITNESS: I don't – I don't 18 remember. 19 BY MR. MORRIS: 20 Q. Did you ever direct anyone acting on 21 your behalf to share with your expert that you 22 had received restricted stock units as a form 23 of compensation? 24 MS. DEITSCH-PEREZ: Object to the 25 form.</p>

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I not – I wasn't</p> <p>3 involved.</p> <p>4 MR. MORRIS: All right. You know,</p> <p>5 what, Deborah, let's take a break; and why</p> <p>6 don't you send me that document.</p> <p>7 It is now 3:28. Let's come back at</p> <p>8 3:40 Eastern, and let's please be on time</p> <p>9 because I'd like to try to finish this</p> <p>10 today. Thank you.</p> <p>11 THE VIDEOGRAPHER: Off the record at</p> <p>12 2:28.</p> <p>13 (Whereupon, a break was taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on</p> <p>15 the record. The time is 2:43.</p> <p>16 MR. MORRIS: I received from counsel</p> <p>17 a photograph in text message form of the</p> <p>18 document that Mr. Dondero was referring to</p> <p>19 at the beginning of the deposition.</p> <p>20 I'm going to ask for that production</p> <p>21 – for the production of that document with</p> <p>22 a Bates number by the end of the day, and I</p> <p>23 hope that could be accommodated.</p> <p>24 MS. DEITSCH-PEREZ: I'm not sure –</p> <p>25 John, I'm not sure it will be by the end of</p>	Page 66	<p>1 JAMES DONDERO</p> <p>2 the day because I don't know when the</p> <p>3 people who do the Bates stamping leave.</p> <p>4 But if it's not today, it will be tomorrow.</p> <p>5 MR. MORRIS: All right. It's 2:44</p> <p>6 in the afternoon your time. I hope that</p> <p>7 your firm has the capability of Bates</p> <p>8 stamping and producing one page before the</p> <p>9 close of business.</p> <p>10 MS. DEITSCH-PEREZ: Okay. But I'm</p> <p>11 not going to get – John, what difference</p> <p>12 does it make whether it's tonight or</p> <p>13 tomorrow?</p> <p>14 MR. MORRIS: You know what, I really</p> <p>15 want to use it in the deposition now, but I</p> <p>16 can't do that because – because you're not</p> <p>17 able – because you – because apparently,</p> <p>18 you can't even promise to do it by the end</p> <p>19 of the day.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Mr. Dondero –</p> <p>22 MS. DEITSCH-PEREZ: Could you –</p> <p>23 could you use it –</p> <p>24 MR. MORRIS: I'd like to –</p> <p>25 MS. DEITSCH-PEREZ: – if I sent it</p>	Page 67
<p>1 JAMES DONDERO</p> <p>2 to you by e-mail instead.</p> <p>3 MR. MORRIS: I'd like to proceed.</p> <p>4 You can e-mail it to me. I mean, I</p> <p>5 asked you to do that an hour ago.</p> <p>6 MS. DEITSCH-PEREZ: Well, the</p> <p>7 easiest way to do it is to send a picture</p> <p>8 is to text it; but if you give me a minute,</p> <p>9 I'll figure out how to send it by e-mail.</p> <p>10 Give me a second. Let's see.</p> <p>11 It just takes a second because it</p> <p>12 goes into my personal e-mail first if it's</p> <p>13 from my iPhone. Okay.</p> <p>14 MR. MORRIS: Can we proceed?</p> <p>15 MS. DEITSCH-PEREZ: Yeah. Give me a</p> <p>16 minute and you'll have it.</p> <p>17 Okay. You should have it in your</p> <p>18 e-mail now, John.</p> <p>19 MR. MORRIS: Thank you. All right.</p> <p>20 I'll let you know when it arrives.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Mr. Dondero, the questions now are</p> <p>23 going to be both in your individual capacity</p> <p>24 and in your capacity as the 30(b)(6) witness.</p> <p>25 Do you understand that?</p>	Page 68	<p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay.</p> <p>4 A. It's either – it's either/or; it's</p> <p>5 not one?</p> <p>6 Q. No.</p> <p>7 A. Okay.</p> <p>8 Q. You contend that the Notes are</p> <p>9 subject to the – withdrawn.</p> <p>10 You contend that the Notes that are</p> <p>11 the subject of the agreements would be forgiven</p> <p>12 upon the fulfillment of certain conditions</p> <p>13 present, right?</p> <p>14 A. Right.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form. He said "subsequent."</p> <p>17 MR. MORRIS: I apologize. Let me</p> <p>18 restate the question.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. You contend that the Notes subject</p> <p>21 to the agreement should be forgiven or would be</p> <p>22 forgiven upon the fulfillment of certain</p> <p>23 conditions subsequent, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And to the best of your knowledge,</p>	Page 69

<p>1 JAMES DONDERO</p> <p>2 none of those conditions have occurred as of</p> <p>3 today, correct?</p> <p>4 A. To the best of my knowledge, yes.</p> <p>5 Q. Okay. You're not aware of any facts</p> <p>6 showing that any of the conditions subsequent</p> <p>7 have been satisfied, fair?</p> <p>8 A. I – yeah. I wouldn't know. You</p> <p>9 would probably know. I don't know.</p> <p>10 Q. I'm only asking for your knowledge.</p> <p>11 One of the conditions subsequent was</p> <p>12 that the Notes would be forgiven if you caused</p> <p>13 Highland to sell its interest in one of three</p> <p>14 portfolio companies above cost, right?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 THE WITNESS: I – yeah. I don't</p> <p>18 know if the noun is me or Highland, but</p> <p>19 yeah.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. The portfolio companies at</p> <p>22 issue were MGM, Comerstone, and Trustway,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And prior to the petition date, you</p>	Page 70	<p>1 JAMES DONDERO</p> <p>2 had the authority to sell any of those</p> <p>3 portfolio companies at any time without having</p> <p>4 to obtain approval from anyone, correct?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Yeah. No, I can't</p> <p>8 agree with that statement.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Why not?</p> <p>11 Who's approval did you have to get</p> <p>12 before you could sell any of those portfolio</p> <p>13 companies?</p> <p>14 A. MGM, I was one board member and I</p> <p>15 think an aggregate. When I was running</p> <p>16 Highland, we spoke for 18 percent of the</p> <p>17 equity. So I couldn't force the overall sale</p> <p>18 of the company unilaterally.</p> <p>19 There was also a shareholder's</p> <p>20 agreement in place that restricted myself and</p> <p>21 Anchorage and a couple of the large holders</p> <p>22 from selling their shares without a disclosure</p> <p>23 and approval process. That is one example.</p> <p>24 With regard to Trustway, I believe I</p> <p>25 was largely unfettered.</p>	Page 71
<p>1 JAMES DONDERO</p> <p>2 With regard to Comerstone, a</p> <p>3 majority of it – or not a majority, but a</p> <p>4 significant minority, I think, was owned by</p> <p>5 both Restoration and the Old Redeemer Fund.</p> <p>6 Q. All right. Well, let me ask you</p> <p>7 this: The conditions subsequent that are</p> <p>8 embedded in the agreements, did that relate to</p> <p>9 just Highland's interests in the portfolio</p> <p>10 companies, or did it relate to interests held</p> <p>11 by anybody else?</p> <p>12 A. It referred to a monetization in</p> <p>13 creating liquidity around Highland's interests</p> <p>14 that were large and illiquid portions of</p> <p>15 Highland's balance sheet.</p> <p>16 Q. Okay. So let me ask the question</p> <p>17 again.</p> <p>18 Prior to the petition date, did you</p> <p>19 have the authority to sell Highland's interests</p> <p>20 in any of the portfolio companies without</p> <p>21 having to obtain the authority of anybody else?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form. Asked and answered.</p> <p>24 THE WITNESS: Sub – subject to my</p> <p>25 prior answer, I could speak for Highland</p>	Page 72	<p>1 JAMES DONDERO</p> <p>2 prior to the bankruptcy.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. Before entering into the</p> <p>5 agreements, did you or anybody acting on your</p> <p>6 behalf analyze the likelihood that any of the</p> <p>7 conditions subsequent would occur?</p> <p>8 A. Likelihood? Analyze? My</p> <p>9 description of them, which was my understanding</p> <p>10 of them, but my description of the assets to my</p> <p>11 sister was – to the trustee of Dugaboy was</p> <p>12 that we held them for a long time. We were</p> <p>13 working towards monetization, but there wasn't</p> <p>14 anything imminent regarding any of them in 2017</p> <p>15 or '18.</p> <p>16 Q. Well, but the actual sale is just</p> <p>17 one part of the condition subsequent, correct?</p> <p>18 The other part is that it's got to</p> <p>19 be sold above cost; is that correct?</p> <p>20 A. That is right.</p> <p>21 Q. Okay. So at the time you entered</p> <p>22 into each of your – each of the three</p> <p>23 agreements, had you done any analysis to</p> <p>24 determine whether or not any – whether</p> <p>25 Highland's interests in any of the portfolio</p>	Page 73

<p>1 JAMES DONDERO 2 companies exceeded its cost? 3 A. No, but I – yes. No, I did not. 4 Q. Did you have any understanding at 5 all as to how the value of Highland's interests 6 in MGM compared to its costs at the time you 7 entered into each of these three agreements? 8 A. No. I mean, my understanding was I 9 knew they were substantially higher, but I 10 didn't know how much higher. 11 Q. Okay. So is it fair to say that the 12 time – at the time you entered into each of 13 these agreements, you knew and understood that 14 the value of Highland's interests in MGM was 15 substantially higher than its costs? 16 A. For MGM, yes. 17 Q. Okay. Did you have an understanding 18 of the relationship between value and costs 19 concerning Comerstone at the time you entered 20 into these agreements? 21 A. My understanding it was moderately 22 higher, and Trustway was between substantially 23 and moderately and higher, I believe. 24 Q. Okay. So is it fair to say that at 25 the time you entered into each of these</p>	Page 74	<p>1 JAMES DONDERO 2 agreements, you believed that the value of 3 Highland's interests in each of the portfolio 4 companies exceeded its costs in varying 5 degrees? 6 A. Varying degrees. As a matter of 7 fact, I would adjust. Comerstone and 8 Trustway, I believe, were moderately higher 9 than their embedded costs or implied costs. 10 That was my understanding. 11 MGM was somewhat substantially. But 12 all of them with a fair amount of volatility 13 and a fair amount of illiquidity. 14 Q. Did you ever give your sister or 15 Dugaboy any information concerning how the 16 value of Highland's interests in any of the 17 portfolio companies compared to Highland's 18 costs before entering into the agreements? 19 A. Not that I recall. 20 Q. Do you have any reason to believe 21 that your sister or Dugaboy had any 22 understanding as to the likelihood that the 23 conditions subsequent would be satisfied at the 24 time the Dugaboy trustee entered into the three 25 agreements with you?</p>	Page 75
<p>1 JAMES DONDERO 2 MS. DEITSCH-PEREZ: Object to the 3 form. 4 THE WITNESS: I – I remember saying 5 it would take a few years at minimum; but 6 other than expressing time, I don't believe 7 I expressed value versus cost or the 8 questions you were asking me previously. 9 BY MR. MORRIS: 10 Q. Okay. You never showed Nancy or 11 Dugaboy any of the Promissory Notes prior to 12 entering into any of the agreements, correct? 13 A. Not that I recall. 14 Q. And you never sent copies of the 15 Promissory Notes to Nancy or Dugaboy before 16 entering into any of these agreements, correct? 17 A. Not that I recall. 18 MS. DEITSCH-PEREZ: Object to the 19 form. 20 John, you've asked these at the last 21 deposition and actually also at the first 22 day of the deposition. 23 MR. MORRIS: Thank you. He's here 24 now in his 30(b)(6) capacity. So please 25 just stop.</p>	Page 76	<p>1 JAMES DONDERO 2 You can object to the form of the 3 question. I really don't appreciate it. 4 You should follow the very professional job 5 that your colleague, Michael Aigen, did the 6 other day. 7 BY MR. MORRIS: 8 Q. Neither Nancy or Dugaboy has ever 9 asked to see copies of any of the Promissory 10 Notes before entering into any of the 11 agreements, correct? 12 MS. DEITSCH-PEREZ: Object to the 13 form. 14 THE WITNESS: I don't know. 15 BY MR. MORRIS: 16 Q. Do you have any reason to believe 17 that Nancy or Dugaboy ever saw a copy of any of 18 the Promissory Notes at issue before entering 19 into the agreements? 20 A. I don't know. 21 Q. During your discussions with Nancy 22 and Dugaboy, did you identify the Promissory 23 Notes that were going to be the subject of each 24 agreement? 25 MS. DEITSCH-PEREZ: Object to the</p>	Page 77

<p>1 JAMES DONDERO</p> <p>2 form.</p> <p>3 You know, we made an agreement that</p> <p>4 you were going to refer to Nancy as the</p> <p>5 Dugaboy trustee. Please stick to it.</p> <p>6 Otherwise, I'm going to have to object each</p> <p>7 time, and I'd rather not.</p> <p>8 MR. MORRIS: I have no problem with</p> <p>9 your objecting to the form of the question.</p> <p>10 It's the speaking that I really do object</p> <p>11 to. And I don't know why you can't control</p> <p>12 yourself.</p> <p>13 MS. DEITSCH-PEREZ: Because I</p> <p>14 hope that –</p> <p>15 MR. MORRIS: Please stop. Please</p> <p>16 stop.</p> <p>17 MS. DEITSCH-PEREZ: – by telling</p> <p>18 you this, you will listen.</p> <p>19 MR. MORRIS: Okay. Your discussion</p> <p>20 and your inability to control yourself is</p> <p>21 going to cause this deposition to go longer</p> <p>22 than it needs to, okay?</p> <p>23 MS. DEITSCH-PEREZ: No. It's your</p> <p>24 repeating questions that's going to do</p> <p>25 that.</p>	Page 78	<p>1 JAMES DONDERO</p> <p>2 MR. MORRIS: You let me know when</p> <p>3 you're done.</p> <p>4 MS. DEITSCH-PEREZ: I'm done.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, during your discussions</p> <p>7 with the Dugaboy trustee, did you identify the</p> <p>8 Promissory Notes that were going to be the</p> <p>9 subject of each agreement?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: No, not that I recall.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you recall – during your</p> <p>15 discussions with the Dugaboy trustee, did you</p> <p>16 identify the maker of any of the Notes that</p> <p>17 were the subject of any of the agreements?</p> <p>18 A. You mean Highland as the maker; is</p> <p>19 that what you're saying?</p> <p>20 Q. No. I'm just asking if during your</p> <p>21 discussions with the Dugaboy trustee, you ever</p> <p>22 disclosed the name of the maker of any of the</p> <p>23 Notes that were subject to the agreements?</p> <p>24 A. She – she knew they were Notes due</p> <p>25 to Highland from various entities. So I don't</p>	Page 79
<p>1 JAMES DONDERO</p> <p>2 know what your question is. Did I identify</p> <p>3 specifically that they were Notes due to</p> <p>4 Highland? I guess the answer to that is yes,</p> <p>5 but I don't know what you're asking me.</p> <p>6 Q. I'm sorry, sir. I'll take the</p> <p>7 responsibility for that.</p> <p>8 I'm asking you if you identified who</p> <p>9 the maker of the Notes were, not who the payee</p> <p>10 was.</p> <p>11 MS. DEITSCH-PEREZ: You mean the</p> <p>12 borrowers, John?</p> <p>13 THE WITNESS: See, I don't want to</p> <p>14 get stuck in my underwear on maker/borrower</p> <p>15 nomenclature.</p> <p>16 She was aware that they were notes</p> <p>17 due to Highland from a variety of entities.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. Did you identify any of those</p> <p>20 entities?</p> <p>21 A. I – yeah. She knew that some were</p> <p>22 Dugaboy, some were NexPoint for sure, and some</p> <p>23 were other entities.</p> <p>24 Q. So – so there were notes where</p> <p>25 Dugaboy owed the money or was the obligor or</p>	Page 80	<p>1 JAMES DONDERO</p> <p>2 was the borrower or was the maker that are</p> <p>3 subject to agreements that you entered into</p> <p>4 with the Dugaboy trustee?</p> <p>5 A. No. Wait. The Dugaboy – the</p> <p>6 Dugaboy Notes weren't subject to the</p> <p>7 forgiveness. It was the other notes that were</p> <p>8 subject to forgiveness.</p> <p>9 Q. So it's really kind of a simple</p> <p>10 question, and I'm not trying to trick you.</p> <p>11 If you think back to the</p> <p>12 conversations that you had with the Dugaboy</p> <p>13 trustee, did you identify the entity of – did</p> <p>14 you identify who the borrowers were under the</p> <p>15 Notes that were going to be subject to the</p> <p>16 agreements?</p> <p>17 A. She knew they were entities – she</p> <p>18 knew there were other related entities. She</p> <p>19 knew NexPoint for sure. She knew Services.</p> <p>20 I can't sit here as I remember – as</p> <p>21 I sit here today and remember whether or not I</p> <p>22 specifically identified HCRE or not, you know;</p> <p>23 but she knew they were related entities.</p> <p>24 Q. All of the revisions of the</p> <p>25 agreement are set forth in paragraph 82; is</p>	Page 81

<p>1 JAMES DONDERO 2 that right? 3 We could put it back up on the 4 screen if you'd like. 5 MR. MORRIS: In fact, why don't we 6 do that. 7 MS. CANTY: I'm sorry, John. 51 – 8 I mean, 50? 9 MR. MORRIS: I think it's 10 Exhibit 31, paragraph 82. 11 MS. CANTY: Oh, okay, 82. I've got 12 you. 13 MR. MORRIS: Thank you. 14 BY MR. MORRIS: 15 Q. Does – Mr. Dondero, other than 16 specifying who the portfolio companies were, 17 does paragraph 82 set forth all of the material 18 terms of each of the agreements? 19 A. I think it sets forth the conditions 20 subsequent. 21 Q. Is there any aspect of your 22 agreement – withdrawn. 23 Is there any aspect of your 24 agreements with the Dugaboy trustees that's not 25 described in this paragraph?</p>	Page 82	<p>1 JAMES DONDERO 2 A. I don't know if it's captured in 3 there, but there was definitely a conversation, 4 discussion that if something like MGM was 5 sold – Anchorage is the largest holder almost 6 a majority in and of themselves. And if it was 7 bought or taken out at a price that we couldn't 8 control or couldn't agree with and it was lower 9 than cost or – you know, Cornerstone, again, 10 had multiple funds between our ownership and 11 control that if – if things were sold 12 beyond – without my support but sold below 13 cost – and I'm not sure that's captured in 14 that paragraph, but I think that was part of 15 the understanding, also. 16 Q. Is there any other part of the 17 understanding that's not set forth in 18 paragraph 82, Mr. Dondero? 19 A. Not that I can think of at this – 20 let me read it one more time, please. 21 Q. Take your time. 22 A. I believe that generally covers it. 23 Q. Was any provision of the agreements 24 the subject of negotiation? 25 MS. DEITSCH-PEREZ: Object to the</p>	Page 83
<p>1 JAMES DONDERO 2 form. 3 THE WITNESS: I don't believe it was 4 materially adjusted by any negotiation. It 5 was just clarified based on discussion is 6 how I would describe it. 7 BY MR. MORRIS: 8 Q. Is there any provision in the 9 agreements that was included at your sis- – at 10 the Dugaboy trustee's request? 11 A. Like I said, there was discussion 12 and clarification. Not specifically that I 13 recall. 14 Q. Okay. Did the Dugaboy trustee 15 refuse to include any provision in the 16 agreement that you had proposed? 17 A. Not that I recall. 18 Q. Can you identify any provision of 19 the agreements that were the subject of a 20 counterproposal that the Dugaboy trustee made? 21 A. I remember clarification discussion 22 around, you know, three companies versus two or 23 one. I remember clarification of monetization 24 being turned to cash versus illiquid. 25 Yeah. I mean, I remember</p>	Page 84	<p>1 JAMES DONDERO 2 discussion – I remember clarification 3 discussions like that, but I don't remember – 4 it was a long time ago. I don't remember the 5 details of anything specific like that. 6 It wasn't – it wasn't a 7 contentious, nor should it have been a 8 contentious negotiation. 9 Q. How long did – do you recall how 10 long each of the conversations lasted that led 11 to the entry of each of the three agreements? 12 A. I remember the first one being 13 longer than the second two, and then I remember 14 it being spread out periods of time. So I 15 can't – I can't – I can't put an exact 16 estimate on it. 17 Q. Okay. I'm going to shift gears. 18 MR. MORRIS: We can take that down 19 now, please. 20 MS. CANTY: (Complies with request.) 21 BY MR. MORRIS: 22 Q. Do you know of any written agreement 23 pursuant to which HCRE provided services to 24 Highland at any time? 25 MS. DEITSCH-PEREZ: Object to the</p>	Page 85

<p>1 JAMES DONDERO 2 form. Asked and answered. 3 THE WITNESS: HCRE provided 4 preferred services to. Well, the 5 participants there in HCRE are, my – 6 myself and McGraner. And, you know, we 7 both provided significant other services to 8 Highland. 9 BY MR. MORRIS: 10 Q. Okay. Is that in writing? Is there 11 a written agreement? 12 That was my question. 13 Is there a written agreement 14 pursuant to which HCRE ever provided services 15 to Highland? 16 A. I don't believe so. 17 Q. Did HCRE ever provide services to 18 Highland? 19 A. I would incorporate my last two 20 answers. Not under a written agreement, but I 21 believe myself and McGraner provided a lot of 22 services. 23 Q. And what services did you and Mr. 24 McGraner provide to Highland? 25 A. I'd say anything real estate related</p>	Page 86	<p>1 JAMES DONDERO 2 on the Highland platform McGraner would have 3 input into. 4 And then I think my – my portfolio 5 management, leadership role in Highland over 6 time is well documented. 7 Q. And how did you know if you were 8 providing services in your capacity as the 9 president of Highland or in your capacity as an 10 officer or owner of the HCRE at the time you 11 provided the services? 12 A. Never – never really thought about 13 parsing it that way. 14 Q. I appreciate that. 15 Do you know whether Highland Capital 16 Management Services ever provided services to 17 Highland? 18 A. Yeah. 19 MS. DEITSCH-PEREZ: Object to the 20 form. Asked and answered. 21 THE WITNESS: Yeah. I would – not 22 in writing. I believe the services owners 23 isn't myself and McGraner. I think it was 24 myself and Okada. 25 And I would say our portfolio and</p>	Page 87
<p>1 JAMES DONDERO 2 leadership contributions to Highland are 3 well documented. 4 BY MR. MORRIS: 5 Q. And my question didn't have anything 6 to do with any particular person. It's just 7 simply whether Highland Capital Management 8 Services ever provided any services to Highland 9 Capital Management, L.P. 10 MS. DEITSCH-PEREZ: Object to the 11 form. 12 THE WITNESS: The entities that 13 you're describing or you're asking 14 questions about don't have employees' 15 services in HCRE. They have ownership 16 individuals that I've described. 17 So I've tried the best I can to 18 answer your question and what the ownership 19 may have done for Highland. 20 But since there's no employee base 21 at either of those two companies, those 22 companies could not have directly provided 23 service to Highland other than, the last 24 thing I would bring up is the track-record 25 concept, you know, in terms of the</p>	Page 88	<p>1 JAMES DONDERO 2 performance of whatever assets are in some 3 of those start-up entities ends up being a 4 useful track record that then Highland can 5 market. 6 BY MR. MORRIS: 7 Q. Okay. How about NexPoint, did 8 NexPoint ever provide services to Highland 9 Capital Management, L.P.? 10 A. Yes. The real estate – yes. I 11 mean, can I just say yes or – 12 Q. You could. That would be really 13 helpful. 14 A. Okay. There we go. 15 Q. Can you describe the circumstances 16 for me? 17 MS. DEITSCH-PEREZ: Finally, some 18 accord between the witness and the 19 questioner. 20 BY MR. MORRIS: 21 Q. Can you describe the services for 22 me? 23 A. NexPoint has a couple of attorneys 24 that are real estate experts. We have a lot of 25 different attorneys, or we did at Highland.</p>	Page 89

<p>1 JAMES DONDERO</p> <p>2 But prior to the bankruptcy, none of the</p> <p>3 Highland attorneys were experienced in real</p> <p>4 estate.</p> <p>5 So anything that required</p> <p>6 transaction help on the Highland platform</p> <p>7 regarding real estate, the NexPoint real estate</p> <p>8 attorneys would help with.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. I'm sure there are others. That's</p> <p>11 all I can think of off the top of my head. I</p> <p>12 just wanted to give you an example.</p> <p>13 Q. I appreciate that.</p> <p>14 You're aware that Highland has sued</p> <p>15 HCMFA to collect on two notes that were signed</p> <p>16 by Frank Waterhouse in 2019 in the aggregate</p> <p>17 amount of \$7.4 million; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And we actually went through</p> <p>20 this the other day, so I don't want to belabor</p> <p>21 it if I don't have.</p> <p>22 But do you recall that we saw the</p> <p>23 incumbency certificate which identified</p> <p>24 Mr. Waterhouse as the treasurer of HCMFA as of</p> <p>25 April 2019?</p>	Page 90	<p>1 JAMES DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And do you recall that you</p> <p>4 signed that incumbency certify in your capacity</p> <p>5 as president of HCMFA?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I want to talk about the first of</p> <p>11 the two Notes, the \$2.4 million Note.</p> <p>12 Do you recall that in early May</p> <p>13 2019, Highland transferred \$2.4 million to</p> <p>14 HCMFA?</p> <p>15 A. I don't remember a lot of specifics,</p> <p>16 but I know there were two Notes as you're</p> <p>17 describing.</p> <p>18 Q. Okay. And there was – and one of</p> <p>19 them – did you authorize the \$2.4-million</p> <p>20 payment?</p> <p>21 A. Yes.</p> <p>22 Q. And why did you authorize Highland</p> <p>23 to transfer \$2.4 million to HCMFA in early May</p> <p>24 2019?</p> <p>25 A. My answer's the same for both –</p>	Page 91
<p>1 JAMES DONDERO</p> <p>2 both Notes. Essentially, it's regarding the</p> <p>3 terrace start issue that we had with the</p> <p>4 Fort Worth SEC.</p> <p>5 Q. Did you give anyone instructions</p> <p>6 concerning the transfer of the \$2.4 million?</p> <p>7 A. I instructed them to make the</p> <p>8 transfer, or I was involved in the – involved</p> <p>9 in approving the transfer.</p> <p>10 Q. And who did you instruct to make the</p> <p>11 transfer of \$2.4 million?</p> <p>12 A. Yeah. It would have been Frank.</p> <p>13 Q. Do you have a recollection of</p> <p>14 instructing Frank to transfer \$2.4 million?</p> <p>15 A. Yeah. Generally, yes.</p> <p>16 Q. Do you have a recollection of what</p> <p>17 instructions you gave him?</p> <p>18 A. It was well-known. It was a very</p> <p>19 disruptive – the whole thing was very</p> <p>20 disruptive at Highland and HCMFA. Everybody</p> <p>21 was aware of it. The settlement, the</p> <p>22 negotiations around the settlement, the</p> <p>23 give-and-take, the amounts changed over time.</p> <p>24 Everybody was aware of it in senior</p> <p>25 management, including myself. And putting the</p>	Page 92	<p>1 JAMES DONDERO</p> <p>2 money into HCMFA to settle it was something I</p> <p>3 was aware of and authorized and a critical</p> <p>4 piece of putting that issue to bed.</p> <p>5 Q. Okay. I'm just asking you if you</p> <p>6 recall what instructions you gave to</p> <p>7 Mr. Waterhouse concerning the transfer if you</p> <p>8 recall?</p> <p>9 A. No. I mean, like I said, I</p> <p>10 authorized the movement of the money.</p> <p>11 Q. Okay. Were you aware at that time</p> <p>12 that the transfer of the \$2.4 million from</p> <p>13 Highland to HCMFA was booked as a loan on both</p> <p>14 Highland and HCMFA's books and records?</p> <p>15 A. I was not aware at the time.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: Can we put up</p> <p>18 Exhibit 53 please.</p> <p>19 THE VIDEOGRAPHER: Counsel, I will</p> <p>20 need a media break in about five minutes.</p> <p>21 MR. MORRIS: Thank you very much.</p> <p>22 Why don't we take that right now before I</p> <p>23 begin my examination on this document. How</p> <p>24 long do you need?</p> <p>25 THE VIDEOGRAPHER: It will just be a</p>	Page 93

<p>1 JAMES DONDERO 2 minute, but this is the end of Media Number 3 1. 4 MR. MORRIS: Okay. 5 THE VIDEOGRAPHER: We are off the 6 record at 3:21. 7 MR. MORRIS: We are off the record, 8 but don't go anywhere. 9 MS. DEITSCH-PEREZ: What? 10 MR. MORRIS: We're not taking a 11 break. 12 THE VIDEOGRAPHER: Yep. This will 13 just take a minute. Please stand by. 14 MR. MORRIS: Thank you. 15 THE VIDEOGRAPHER: All right. 16 Suzanne, are you good to go? 17 THE COURT REPORTER: I'm good. 18 THE VIDEOGRAPHER: This is the 19 beginning of Media Number 2, Volume II 20 [sic] in the deposition of James Dondero. 21 We are back on the record at 3:22. 22 MR. MORRIS: All right. Can we 23 please put up Exhibit 53. 24 MS. CANTY: Yeah. Just one second. 25 My computer went haywire. Give me one</p>	Page 94	<p>1 JAMES DONDERO 2 minute. 3 (Whereupon, Exhibit 53, E-mail 4 correspondence, Bates stamped D-CNL003768 5 through D-CNL003770, marked for 6 identification, as of this date.) 7 BY MR. MORRIS: 8 Q. Okay. So Mr. Dondero, do you see 9 what's on the screen here? 10 Mr. Dondero? 11 MR. MORRIS: Deborah? 12 Apparently Mr. Dondero has left the 13 seat. 14 THE VIDEOGRAPHER: Would you like to 15 go off record? 16 MR. MORRIS: No. 17 THE VIDEOGRAPHER: Okay. We'll stay 18 on the record. 19 MR. MORRIS: The video is still 20 rolling, right, sir? 21 THE VIDEOGRAPHER: Yes, it is. 22 MR. MORRIS: Thank you. 23 Hi, Michael. If you're – if you're 24 able, can you reach out to your partner? 25 MR. AIGEN: I had texted her. I</p>	Page 95
<p>1 JAMES DONDERO 2 will try to call her, too; but I did text 3 her a couple of minutes ago. I will try to 4 reach out again. Hold on. 5 MS. DEITSCH-PEREZ: I'm back. I'm 6 lucky in that the ladies room is directly 7 across from the conference room. 8 Mr. Dondero's down at the other end 9 of the floor, so he will be back shortly. 10 And I just saw your note, John. The 11 – the videographer said he needed a break; 12 and you said, okay, then let's take our 13 break now. So we took a restroom break. 14 MR. MORRIS: I think everybody on 15 the phone – and there's a transcript of it 16 – knows that I specifically said, how long 17 do you need. He said one minute, and I 18 said don't go anywhere. 19 This is your time, not mine. 20 MS. DEITSCH-PEREZ: Prior to that, 21 you said, let's take the break now. 22 MR. MORRIS: Yeah, to allow him to 23 change the tape. I'm not going to question 24 anybody on the call, but I'm 100 percent 25 certain that they would all tell you – and</p>	Page 96	<p>1 JAMES DONDERO 2 the record will reflect, I specifically 3 said do not leave. 4 MS. DEITSCH-PEREZ: Okay. 5 Mr. Dondero is back. 6 You have to turn – turn the video 7 on. 8 THE WITNESS: I'm back. 9 BY MR. MORRIS: 10 Q. All right. Do you see on the screen 11 there's a document that's been marked as 12 Exhibit 53? 13 A. Yup. 14 Q. Do you see there's an e-mail string 15 dated May 2, 2019? 16 A. Yes. 17 Q. And do you see that Mr. Waterhouse 18 has – if you look at the second to the top, 19 Mr. Waterhouse's e-mail is forwarding a 20 spreadsheet to David Klos and Kristin Hendrix 21 that he described as, quote, "The support for 22 the payment to GAF by HCMFA?" 23 A. Yes. 24 Q. What's GAF? 25 A. That's the fund itself that owned</p>	Page 97

<p>1 JAMES DONDERO</p> <p>2 the TerreStar investment. The SEC wanted, I</p> <p>3 believe, some payment to go to them; but they</p> <p>4 all, meaning the SEC, and the SEC wanted some</p> <p>5 payment to go to the fund itself for the</p> <p>6 benefit of the investors.</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Can we can to the chart</p> <p>9 that's attached.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Have you ever seen this chart</p> <p>13 before, sir?</p> <p>14 A. I don't believe so specifically, but</p> <p>15 I understand what it is.</p> <p>16 Q. And is it your understanding, based</p> <p>17 on this chart, that the loss to the fund was</p> <p>18 \$6,068,851?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: Yes.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And there's – there's a column</p> <p>24 there that's lost to fund.</p> <p>25 Do you see that?</p>	Page 98	Page 99
<p>1 JAMES DONDERO</p> <p>2 or to the fund or whatever, I – I have all</p> <p>3 faith and confidence we complied with; but I</p> <p>4 don't – I don't know the exact numbers. I'm</p> <p>5 not aware of the exact numbers.</p> <p>6 Q. Do you understand that this analysis</p> <p>7 shows how HCMFA was going to finance the</p> <p>8 payment to the fund as a result of the NAV</p> <p>9 error?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: I'm sorry. Could you</p> <p>13 repeat that question again?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Sure. Do you understand that</p> <p>16 this – that this chart here sets forth the</p> <p>17 manner in which HCMFA is going to fund the</p> <p>18 payment that it was making to GAF on account of</p> <p>19 the NAV error?</p> <p>20 A. I would call it more of a</p> <p>21 calculation on where the amounts are coming</p> <p>22 from. It doesn't appear to me that this is a</p> <p>23 funding statement.</p> <p>24 Q. Okay. I appreciate that.</p> <p>25 So – so your interpretation of this</p>	Page 100	Page 101

<p>1 JAMES DONDERO</p> <p>2 A. – versus the other column, yeah.</p> <p>3 Q. I apologize, Mr. Dondero.</p> <p>4 So if we look at the last column,</p> <p>5 the total, does that comport with your</p> <p>6 recollection that HCMFA paid GAF approximately</p> <p>7 \$7.44 million in May of 2019 on account of the</p> <p>8 NAV error?</p> <p>9 A. I think it's more than that, and I</p> <p>10 think it's also the 375 below that.</p> <p>11 Q. Okay.</p> <p>12 A. And then I – yeah, definitely those</p> <p>13 two numbers in aggregate. I don't know if it's</p> <p>14 any others.</p> <p>15 Q. Okay. And did, to the best of your</p> <p>16 recollection, HCMFA make an insurance claim on</p> <p>17 which it received almost \$5 million as a source</p> <p>18 of funding for the payment that was due to GAF?</p> <p>19 A. Yes.</p> <p>20 Q. Are you familiar with that insurance</p> <p>21 claim?</p> <p>22 A. No.</p> <p>23 Q. Do you know if the insurance claim</p> <p>24 made any mention of Highland?</p> <p>25 A. I have no idea. I have no idea.</p>	Page 102	Page 103
<p>1 JAMES DONDERO</p> <p>2 \$2.4 million the amount of money that HCMFA</p> <p>3 needed in order to fully fund the payment to</p> <p>4 GAF?</p> <p>5 A. And I don't want to mince small</p> <p>6 numbers; but to the extent that they gave up</p> <p>7 their management fees also, like that 1939 or</p> <p>8 the 39 above that – and I don't know what that</p> <p>9 47 is above that – those are management fees</p> <p>10 that would have paid salaries and expenses at</p> <p>11 HCMFA also.</p> <p>12 So to the extent they gave up those</p> <p>13 items as part of the settlement, then HCMFA</p> <p>14 would have needed more money than even the 2.4</p> <p>15 that came from Highland.</p> <p>16 Q. Do you know if HCMFA ever informed</p> <p>17 the SEC that Highland was responsible for the</p> <p>18 NAV error?</p> <p>19 A. I – I don't know. We wouldn't have</p> <p>20 hidden it if they would have asked. My</p> <p>21 experience with the SEC is they identify the</p> <p>22 advisor; and who the advisor picks for vendors</p> <p>23 the advisor's responsible for.</p> <p>24 MR. MORRIS: I move to strike</p> <p>25 everything after "I don't know."</p>	Page 104	Page 105

<p>1 JAMES DONDERO</p> <p>2 all the valuation activities were performed by</p> <p>3 Highland. And GAF and HCMFA relied on</p> <p>4 Highland, and it was a material part of board</p> <p>5 conversations for over a year.</p> <p>6 MR. MORRIS: Okay. I move to</p> <p>7 strike.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. I'm asking you just about writings,</p> <p>10 sir.</p> <p>11 Can you identify –</p> <p>12 A. No, no, no. I'm not – I'm not</p> <p>13 going to – I'm not going to allow that strike,</p> <p>14 or I'm not answering anymore questions.</p> <p>15 Q. Well, the judge will be the</p> <p>16 determiner of that. So I'd like you to answer</p> <p>17 my question.</p> <p>18 Is there any – I don't want to know</p> <p>19 about board meetings.</p> <p>20 Is there anything in writing that</p> <p>21 HCMFA provided to GAF that specifically stated</p> <p>22 that Highland and not HCMFA was responsible for</p> <p>23 the NAV error?</p> <p>24 MS. DEITSCH-PEREZ: Asked and</p> <p>25 answered.</p>	Page 106	Page 107
<p>1 JAMES DONDERO</p> <p>2 informed the Corporate Accounting Group that</p> <p>3 this transaction was a, quote, "New inter</p> <p>4 co-loan?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that he asked</p> <p>7 Christian – Kristin or Hayley to prepare a</p> <p>8 Promissory Note for discussion?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Are you aware in May 2019,</p> <p>11 Frank Waterhouse was included in the e-mail</p> <p>12 string identified as Corporate Accounting?</p> <p>13 A. I do not have that awareness.</p> <p>14 Q. Okay. Do you see at the top</p> <p>15 Ms. Hendrix – Ms. Hendrix's response to</p> <p>16 Mr. Klos's e-mail and attaches a copy of a</p> <p>17 Promissory Note?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we just go to the</p> <p>21 attachment, please.</p> <p>22 MS. CANTY: (Complies with request.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you see that that is a Promissory</p> <p>25 Note dated May 2, 2019, in the amount of</p>	Page 108	Page 109

<p>1 JAMES DONDERO</p> <p>2 instructed to be paid to HCMFA by Highland in</p> <p>3 May of 2019, do you recall when you first</p> <p>4 learned that that was booked as a loan?</p> <p>5 A. I believe just generally as part of</p> <p>6 this litigation, not before then.</p> <p>7 Q. Are you aware that the Corporate</p> <p>8 Accounting Group created a daily list of wire</p> <p>9 transfers that were being made on behalf of</p> <p>10 Highland and its affiliates?</p> <p>11 A. Not – no, not specifically.</p> <p>12 Q. Okay. So since you did not know</p> <p>13 that the \$2.4 million transfer had been booked</p> <p>14 as a loan, is it fair to say that you never</p> <p>15 told anybody prior to the commencement of this</p> <p>16 litigation that the transaction should not have</p> <p>17 been booked as a loan?</p> <p>18 A. I had no conversations either way</p> <p>19 prior to this litigation regarding the booking</p> <p>20 of the 2.4 million.</p> <p>21 Q. Did you ever take any steps to try</p> <p>22 to determine how Highland and HCMFA accounted</p> <p>23 for the \$2.4 million that you instructed to be</p> <p>24 transferred from Highland to HCMFA in early</p> <p>25 May 2019?</p>	Page 110	Page 111
<p>1 JAMES DONDERO</p> <p>2 A. Yes, generally.</p> <p>3 Q. Okay. Why did you authorize</p> <p>4 Highland to transfer \$5 million to HCMFA in</p> <p>5 early 2019?</p> <p>6 A. It was part of the overall</p> <p>7 resolution of the TerreStar situation.</p> <p>8 Q. Do you recall that HCMFA paid</p> <p>9 something called a consent fee equal to</p> <p>10 \$5 million in early May 2019?</p> <p>11 A. Well, like I said, I don't recall</p> <p>12 the exact amounts or the exact amounts net of</p> <p>13 insurance; but my recollection it was to</p> <p>14 resolve that.</p> <p>15 Q. Do you know – do you know – did –</p> <p>16 let's real simple.</p> <p>17 Did – did HCMFA pay a consent fee</p> <p>18 in May of 2019?</p> <p>19 A. I – I don't recall.</p> <p>20 Q. Do you know what a consent fee is?</p> <p>21 A. Yes.</p> <p>22 Q. What's a consent fee?</p> <p>23 A. It's a – a fee to encourage</p> <p>24 shareholder vote on something or shareholder</p> <p>25 restitution on something, typically.</p>	Page 112	Page 113

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: My answer would be it</p> <p>3 depends.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you recall whether Highland –</p> <p>6 withdrawn.</p> <p>7 Do you recall whether HCMFA was</p> <p>8 required to make – to make a – to pay a</p> <p>9 consent fee at any time in 2019?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall ever believing that</p> <p>12 HCMFA paid a consent fee because of something</p> <p>13 that – because of a mistake that Highland</p> <p>14 made?</p> <p>15 A. It could be. I don't know.</p> <p>16 Q. I'm just asking if you had a</p> <p>17 recollection?</p> <p>18 A. I don't have a recollection.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: To the videographer, I</p> <p>21 think Mr. Dondero's screen has frozen.</p> <p>22 MS. DEITSCH-PEREZ: John, your</p> <p>23 screen is frozen, too.</p> <p>24 MR. MORRIS: I'm –</p> <p>25 MS. DEITSCH-PEREZ: I'm also – hang</p>	Page 114	<p>1 JAMES DONDERO</p> <p>2 on. I've lost contact. Give me a minute.</p> <p>3 THE VIDEOGRAPHER: Okay. I'd like</p> <p>4 us to go off record. Do you agree?</p> <p>5 MR. MORRIS: Yeah, but please don't</p> <p>6 leave.</p> <p>7 MS. DEITSCH-PEREZ: Yes, we agree.</p> <p>8 THE VIDEOGRAPHER: All right. Off</p> <p>9 the record at 3:53.</p> <p>10 (Discussion held off the record.)</p> <p>11 THE VIDEOGRAPHER: We are back on</p> <p>12 the record at 3:54.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Can we put up – no. Before</p> <p>15 we do that, Mr. Dondero, can you hear me?</p> <p>16 We can't hear you. Are you on mute?</p> <p>17 Are you on mute? Can you speak?</p> <p>18 You're yelling at me now. Stop</p> <p>19 yelling at me.</p> <p>20 THE VIDEOGRAPHER: I'm seeing is</p> <p>21 that Mr. Dondero is on mute.</p> <p>22 (Interruption.)</p> <p>23 THE VIDEOGRAPHER: We've got – do</p> <p>24 you want to go off video record?</p> <p>25 MR. MORRIS: No.</p>	Page 115
<p>1 JAMES DONDERO</p> <p>2 Can somebody help Mr. Dondero and</p> <p>3 get his audio feed fixed?</p> <p>4 Thank you, sir.</p> <p>5 MS. DEITSCH-PEREZ: Does this make a</p> <p>6 difference?</p> <p>7 MR. MORRIS: It sure does.</p> <p>8 THE WITNESS: Hello, hello.</p> <p>9 THE MORRIS: Thank you. All right.</p> <p>10 Let's try and – let's try and finish this</p> <p>11 up.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you ready, sir?</p> <p>14 A. Yes.</p> <p>15 Q. Were you aware in May 2019 that the</p> <p>16 \$5-million transfer from Highland to HCMFA was</p> <p>17 booked as a loan?</p> <p>18 A. No.</p> <p>19 MR. MORRIS: Can we put up</p> <p>20 Exhibit 56, please.</p> <p>21 MS. CANTY: (Complies with request.)</p> <p>22 (Whereupon, Exhibit 56, E-mail</p> <p>23 correspondence, Bates stamped D-CNL003763,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>	Page 116	<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. All right. Do you see that this is</p> <p>4 an e-mail from Ms. Hendrix to the Corporate</p> <p>5 Accounting Group on May 3, 2019?</p> <p>6 Do you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And do you see that Ms. Hendrix told</p> <p>9 corporate accounting to transfer \$5 million as</p> <p>10 a, quote, "new loan," close quote?</p> <p>11 A. Yes.</p> <p>12 Q. And did you see Ms. Hendrix also</p> <p>13 said that she would, quote, "paper the loan,"</p> <p>14 close quote?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You're aware that from time</p> <p>17 to time, members of the Corporate Accounting</p> <p>18 Group used a template for a Promissory Note</p> <p>19 that had been previously prepared by counsel,</p> <p>20 correct?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 THE WITNESS: I – yeah. I'm aware</p> <p>24 they have a loan template, yes.</p> <p>25</p>	Page 117

<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. Do you see there's a</p> <p>4 parenthetical in the first sentence that says,</p> <p>5 "(4.4M should be coming in from Jim soon)"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what that refers to?</p> <p>8 A. My – my educated – boy. My</p> <p>9 educted speculation is that Highland didn't</p> <p>10 have enough cash, so I probably put four into</p> <p>11 Highland for Highland to send to HCMFA. That's</p> <p>12 my educated guess; but otherwise, I don't know</p> <p>13 specifically.</p> <p>14 Q. And do you recall that you had taken</p> <p>15 out a loan from Highland earlier in the year,</p> <p>16 and this payment was credited against the</p> <p>17 principal and interest then due on that Note?</p> <p>18 A. I don't have specific awareness.</p> <p>19 That would make sense.</p> <p>20 Q. Okay.</p> <p>21 A. Versus – versus creating a new loan</p> <p>22 or something.</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: Let's go to Exhibit 57,</p> <p>25 please.</p>	Page 118	Page 119
<p>1 JAMES DONDERO</p> <p>2 Q. And did you see this for the first</p> <p>3 time when I showed it to you late last week?</p> <p>4 A. Yes.</p> <p>5 Q. And did you learn about the loan</p> <p>6 from Highland to HCMFA for the first time after</p> <p>7 the litigation was commenced?</p> <p>8 A. That's the first time I remember.</p> <p>9 Q. And did you learn that Highland and</p> <p>10 HCMFA had booked the \$5-million transfer in May</p> <p>11 of 2019 as a loan for the first time after the</p> <p>12 litigation was commenced?</p> <p>13 A. That is my recollection.</p> <p>14 Q. Okay. We talked at your first</p> <p>15 deposition in May about Highland's audited</p> <p>16 financial statements.</p> <p>17 I don't know if you have a</p> <p>18 recollection of that. Do you?</p> <p>19 A. Just generally, yes.</p> <p>20 Q. Okay. I just want to focus on these</p> <p>21 two notes.</p> <p>22 For this portion of the deposition,</p> <p>23 we are questioning you in your individual</p> <p>24 capacity, and you're only focused on these two</p> <p>25 notes from HCMFA to Highland, okay?</p>	Page 120	Page 121
<p>1 JAMES DONDERO</p> <p>2 MS. CANTY: (Complies with request.)</p> <p>3 (Whereupon, Exhibit 57, Promissory</p> <p>4 Note, Bates stamped D-CNL003764 through</p> <p>5 D-CNL003765, marked for identification, as</p> <p>6 of this date.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. In fact, were you aware, sir, that</p> <p>9 in May 2019, you paid Highland exactly</p> <p>10 \$7.5 million?</p> <p>11 A. Not specifically, but it makes sense</p> <p>12 given the context we're discussing.</p> <p>13 Q. Okay. So the context that we're</p> <p>14 discussing was HCMFA needed \$7.5 million.</p> <p>15 Highland didn't have it. So that seven – you</p> <p>16 paid \$7.5 million to Highland, which was</p> <p>17 applied against your outstanding note. And</p> <p>18 then Highland transferred that money to HCMFA.</p> <p>19 Does that sound right to you?</p> <p>20 A. Generally, yes.</p> <p>21 Q. Okay. So now if we look at this</p> <p>22 note that's on the screen, do you see this is a</p> <p>23 Promissory Note for \$5 million dated May 3,</p> <p>24 2019?</p> <p>25 A. Yes.</p> <p>1 JAMES DONDERO</p> <p>2 A. Okay.</p> <p>3 Q. Okay. When did you first learn that</p> <p>4 these notes were carried as assets on</p> <p>5 Highland's balance sheet?</p> <p>6 A. Like I said, I – my recollection is</p> <p>7 that as part of the bankruptcy and part of the</p> <p>8 litigation.</p> <p>9 Q. And so did you learn of it as part</p> <p>10 of the bankruptcy before the litigation was</p> <p>11 commenced, or did you learn that these notes</p> <p>12 were carried as assets after – only after the</p> <p>13 litigation was commenced?</p> <p>14 A. I believe only after. Especially,</p> <p>15 the specificity with regard to the notes, only</p> <p>16 after the litigation was commenced.</p> <p>17 Q. Okay. When did you learn for the</p> <p>18 first time that these notes were carried as</p> <p>19 liabilities on HCMFA's balance sheet?</p> <p>20 Withdrawn. No foundation.</p> <p>21 Are you aware that these notes have</p> <p>22 been carried as liabilities on HCMFA's balance</p> <p>23 sheet?</p> <p>24 A. I wasn't – I wasn't – I wasn't</p> <p>25 aware prior to the litigation.</p>	Page 121	

<p>1 JAMES DONDERO</p> <p>2 Q. Okay. Did you learn after the</p> <p>3 litigation that these notes had been carried as</p> <p>4 liabilities on HCMFA's balance sheets?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you ever review</p> <p>7 Highland's audited financial statements?</p> <p>8 A. Not with any specificity.</p> <p>9 Q. Are you aware that Highland gave</p> <p>10 these Promissory Notes to PWC as part of the</p> <p>11 audit process?</p> <p>12 A. I would assume they did, but I don't</p> <p>13 have specific awareness.</p> <p>14 Q. Okay. And why do you assume that</p> <p>15 they did?</p> <p>16 A. As part of complete financials to</p> <p>17 the extent that they were made by Kristin or</p> <p>18 whoever, properly or improperly. Once they</p> <p>19 existed, they would have been part of a</p> <p>20 complete audit.</p> <p>21 Q. Are you aware that these two</p> <p>22 Promissory Notes were disclosed in Highland's</p> <p>23 audited financial statements for the period</p> <p>24 ending December 31, 2018, as subsequent events?</p> <p>25 A. No.</p>	Page 122	Page 123
<p>1 JAMES DONDERO</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to page 252</p> <p>4 of the document? It's got to be – let's</p> <p>5 see the Bates.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 MR. MORRIS: Yeah. Right there.</p> <p>8 Okay. Scroll just to the page before so we</p> <p>9 can see the heading.</p> <p>10 MS. CANTY: (Complies with request.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you see that this is the</p> <p>13 section of the audited financials entitled</p> <p>14 "Subsequent Events"?</p> <p>15 A. Yes.</p> <p>16 Q. And is it your understanding that</p> <p>17 the auditors include in subsequent events</p> <p>18 material transactions THAT occur between the</p> <p>19 end of the fiscal period in which had audit has</p> <p>20 been conducted and the date that the auditors</p> <p>21 sign off?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if you look at page 39,</p> <p>24 the next to the last paragraph, do you see, it</p> <p>25 says, quote, "Over the course of 2019 through</p>	Page 124	Page 125

<p>1 JAMES DONDERO 2 that was responsible for working with the 3 auditors in the preparation of the audit 4 reports? 5 A. Yeah, yes. 6 Q. Do you know what group that was? 7 A. I believe there's a financial 8 reporting group that reports to Frank that 9 handles this interaction. 10 Q. Are you familiar – are you aware of 11 what role Mr. Waterhouse plays, if any, in 12 connection with Highland's annual audit, at 13 least during the time that you were serving as 14 president? 15 A. I think he – he coordinates – I 16 think he has to sign off on many aspects of it, 17 you know, as a C suite executive. So he's 18 responsible for, you know, completeness, 19 integrity, et cetera. 20 And there's a certain amount of 21 reliance that PWC puts on it; but my 22 understanding is audits for the last bunch of 23 years has been pretty much a hundred percent 24 sampling and verification. 25 Q. High –</p>	Page 126	<p>1 JAMES DONDERO 2 A. – PWC. 3 Q. I apologize, sir. 4 Highland was the sole source of 5 information that's contained in its audit 6 reports, right, to the best of your knowledge? 7 A. No. No. When I – the last thing I 8 said a minute ago about I believe it was a 9 hundred percent sampling and verification, I 10 think the audit firm ties back to vendors, 11 credit agreements, source documents, et cetera. 12 Highland is not the only source of 13 this information. 14 Q. You were also responsible for the 15 audit report; is that fair? 16 A. Yes. 17 Q. And that's because you signed a 18 management representation letter, correct? 19 A. Yes. 20 Q. And do you have an understanding of 21 what management a representation letter is? 22 MS. DEITSCH-PEREZ: Object to the 23 form. I think you've asked this in each 24 day of the deposition. 25 MR. MORRIS: Okay. Just trying to</p>	Page 127
<p>1 JAMES DONDERO 2 get some background here. 3 THE WITNESS: Yes, I have a general 4 understanding. They very from accounting 5 firm to accounting firm, and they very 6 depending upon the type of audit. But I 7 have a general understanding of them, yes. 8 BY MR. MORRIS: 9 Q. Okay. And you're – are you aware 10 that HCMFA had its financial statements audited 11 by PWC as well? 12 A. Yes. 13 Q. Are you aware that HCMFA disclosed 14 the May 2019 Notes in its own audited financial 15 statements? 16 A. I assume so. 17 Q. Have you ever – 18 A. I don't have specific – I don't 19 have specific awareness, but it's not reported 20 here but not on HCMFA; so I assume they are, 21 yes. 22 Q. Okay. And do you sign Management 23 Representation Letters for HCMFA's audit as you 24 do for Highland? 25 A. I believe so.</p>	Page 128	<p>1 JAMES DONDERO 2 Q. Have you ever told anyone that 3 HCMFA's audited financial statements for the 4 period ending December 31, 2018, inaccurately 5 described the \$7.4 million transferred from 6 Highland to HCMFA as loans? 7 MS. DEITSCH-PEREZ: Object to the 8 form. 9 THE WITNESS: No, I have not; but I 10 haven't been involved in any of the audit 11 functions for quite some time. 12 I don't think I was involved or 13 signed Management Representation Letters 14 for any period covered by this. 15 BY MR. MORRIS: 16 Q. Okay. Let's switch gears. 17 The advisors have annual contracts 18 to manage certain retail funds, correct? 19 A. Yes. 20 Q. And the retail funds have a board 21 that decides whether to renew the contracts 22 with the advisors, correct? 23 A. Yes. 24 Q. And in connection with the annual 25 renewal, the advisors provide information to</p>	Page 129

<p>1 JAMES DONDERO</p> <p>2 the retail board, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And you've participated in meetings</p> <p>5 with the retail board concerning the renewal</p> <p>6 process, correct?</p> <p>7 A. Sometimes.</p> <p>8 Q. Okay. Do you recall that in late</p> <p>9 2020, the advisors provided a written memo to</p> <p>10 the retail board in connection with the annual</p> <p>11 15-C review process?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we put up</p> <p>15 Exhibit 59, please.</p> <p>16 MS. CANTY: (Complies with request.)</p> <p>17 (Whereupon, Exhibit 59, Memorandum,</p> <p>18 dated October 23, 2020, Bates stamped</p> <p>19 HCMFAS 000025 through HCMFAS 000031, marked</p> <p>20 for identification, as of this date.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you see that this is a memo dated</p> <p>23 October 23, 2020?</p> <p>24 A. Yes.</p> <p>25 Q. Is it fair to describe this memo as</p>	Page 130	Page 131
<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: Just stop there for a</p> <p>3 second.</p> <p>4 MS. CANTY: (Complies with request.)</p> <p>5 THE WITNESS: Okay. Keep going.</p> <p>6 MS. CANTY: (Complies with request.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Just – I'm going to ask you</p> <p>9 questions about Section 2 just so you know, but</p> <p>10 you're welcome to view any portion of this</p> <p>11 document as you believe necessary.</p> <p>12 MS. CANTY: I also put it in the</p> <p>13 chat, John.</p> <p>14 MR. MORRIS: Thank you.</p> <p>15 THE WITNESS: I see it.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So –</p> <p>18 A. Can you go – let's keep going.</p> <p>19 Just I'll quickly read the whole thing.</p> <p>20 Q. No problem.</p> <p>21 A. That's it. Okay. Got it. All</p> <p>22 right.</p> <p>23 Q. Okay. So now that you've seen the</p> <p>24 substance of the memo, do you recall if you saw</p> <p>25 it before today?</p>	Page 132	Page 133

<p>1 JAMES DONDERO 2 and accounting support for all the funds listed 3 in the "to" section here. 4 As I said earlier, NexPoint has a 5 couple accountants – I mean – I'm sorry – a 6 couple lawyers who do real estate transactions 7 stuff. Their – their title – their title 8 meaning DC's counsel, DC Sauter, who's the most 9 senior attorney there, it might be general 10 counsel; but he only does real estate 11 transactions. 12 The legal dependents of NexPoint and 13 HCMFA was on the Shared Services Agreement and 14 the Highland attorneys that performed those 15 Shared Services Agreements. 16 Q. Okay. Did anybody acting on behalf 17 of the advisors review and approve this memo 18 before it was sent to the retail funds? 19 A. I don't know. 20 Q. Is it your practice as the president 21 of the advisors to have memos sent to the 22 retail board without anybody reviewing and 23 approving the memos on behalf of the advisors? 24 MS. DEITSCH-PEREZ: Object to the 25 form.</p>	Page 134	<p>1 JAMES DONDERO 2 THE WITNESS: I'm not aware of what 3 standard practice was or wasn't; but again, 4 the infrastructure for something like this 5 would have been only at Highland. 6 HCMFA only had portfolio managers 7 and analysts as employees, and NexPoint 8 pretty much only had portfolio managers and 9 analysts as employees. 10 The staff functions were at 11 Highland, and Highland serviced the funds 12 via a Shared Services Agreement that was 13 still in place as of the date of this memo. 14 MR. MORRIS: Okay. Can we go down 15 to Section 2, please. 16 MS. CANTY: (Complies with request.) 17 BY MR. MORRIS: 18 Q. Looking at Section 2, do you see 19 that there's a question as to whether there are 20 any material amounts currently payable or due 21 in the future EG notes to – 22 A. Yes. 23 Q. – the Highland by HCMFA or 24 NexPoint? 25 A. Yes.</p>	Page 135
<p>1 JAMES DONDERO 2 Q. Okay. In the 53 or 54 weeks since 3 this memo as was sent, do you know if it has 4 been amended or modified in any way? 5 A. I believe there was similar memos 6 like this for this year's annual – for the 7 2021 renewal, but I do not have – I've not 8 seen those either; and I don't know how this 9 answer would have changed. 10 Q. Okay. But at least as of 11 October 23, 2020, this is the response that the 12 advisors gave to the retail board in response 13 to Question Number 2, right? 14 MS. DEITSCH-PEREZ: Object to the 15 form. 16 THE WITNESS: As far – as far as I 17 know, having seen it here for the first 18 time and not knowing whether this was the 19 final or if there were subsequent letters 20 and not knowing what the 2021 letter looks 21 like, on its surface that appears so; but I 22 have no awareness. 23 BY MR. MORRIS: 24 Q. Okay. And just I'll represent to 25 you, Mr. Dondero, that I obtained this letter</p>	Page 136	<p>1 JAMES DONDERO 2 from counsel to the advisors in response to my 3 specific request for the October 2020, 15-C 4 response. So that's how – that's how I got it 5 just so you know. 6 A. Okay. 7 Q. So – so were you aware in October 8 of 2020 that NexPoint informed the retail board 9 that as of June 30, 2020, it owed Highland and 10 its affiliates approximately \$23.7 million? 11 MS. DEITSCH-PEREZ: Object to the 12 form. 13 THE WITNESS: I was not aware. 14 BY MR. MORRIS: 15 Q. Does that amount comport with your 16 recollection as to what was outstanding on the 17 May 31, 2017, note that NexPoint gave to 18 Highland? 19 A. I don't have awareness. 20 Q. Okay. Did NexPoint – do you know 21 if NexPoint ever informed the retail board that 22 any – any portion of that \$23.7 million was 23 subject to any of the agreements that you 24 entered into with the Dugaboy trustee? 25 A. I – I don't know.</p>	Page 137

<p>1 JAMES DONDERO</p> <p>2 Q. Did you ever instruct anybody on</p> <p>3 behalf of NexPoint to advise the retail board</p> <p>4 of the existence of the agreements?</p> <p>5 A. No, I do not believe so.</p> <p>6 Q. Do you know if anybody acting on</p> <p>7 behalf of NexPoint has ever informed the retail</p> <p>8 board that NexPoint's outstanding obligation</p> <p>9 was subject to the agreements that you entered</p> <p>10 into with the Dugaboy trustee?</p> <p>11 A. No.</p> <p>12 Q. Did you ever inform the retail</p> <p>13 boards that any portion of this \$23 million was</p> <p>14 subject to offset?</p> <p>15 A. You know what, I – let me answer</p> <p>16 that and let me also adjust the last five no</p> <p>17 answers I just rattled off.</p> <p>18 I'm thinking in the context of the</p> <p>19 time period of the date of this letter, which</p> <p>20 is October of 2020.</p> <p>21 Again, there would have been similar</p> <p>22 letters and disclosures like this and</p> <p>23 additional questions, initial requests for</p> <p>24 renewal, and then subsequent questions,</p> <p>25 probably multiple subsequent questions, given</p>	Page 138	Page 139
<p>1 JAMES DONDERO</p> <p>2 A. Right. I just want to be clear that</p> <p>3 my answer's saying I did not specifically</p> <p>4 instruct somebody to tell them. It doesn't</p> <p>5 mean they don't know or someone else didn't</p> <p>6 tell them.</p> <p>7 Q. Okay.</p> <p>8 A. So that's – that's a clarification</p> <p>9 I want to make.</p> <p>10 Q. Okay. No problem.</p> <p>11 And then – and then do you see that</p> <p>12 there's a report to the retail board that HCMFA</p> <p>13 had approximately \$12.3 million outstanding to</p> <p>14 Highland as of June 30, 2020?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So just the same type of</p> <p>17 questions.</p> <p>18 Do you have any knowledge as to how</p> <p>19 that number was calculated?</p> <p>20 A. No.</p> <p>21 Q. Do you know if it includes the</p> <p>22 \$7.4 million, which is the aggregate principal</p> <p>23 amount of the two notes that HCMFA issued to</p> <p>24 Highland in May of 2019?</p> <p>25 A. I don't specifically, but given</p>	Page 140	Page 141

<p>1 JAMES DONDERO</p> <p>2 THE WITNESS: I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you know whether anybody acting</p> <p>5 on behalf of either the advisors informed the</p> <p>6 retail board at any time in the year 2020 that</p> <p>7 either advisor had claims against Highland?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 MR. MORRIS: Okay. We can take that</p> <p>12 down, please.</p> <p>13 MS. CANTY: (Complies with request.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Are you aware that the Court</p> <p>16 confirmed the Debtor's Fifth Amended Complaint</p> <p>17 of Reorganization in February of 2021?</p> <p>18 A. Generally.</p> <p>19 Q. And do you recall that objections to</p> <p>20 the confirmation of the plan were filed by you</p> <p>21 and each of the advisors, among others?</p> <p>22 A. Yes.</p> <p>23 Q. And do you recall that these</p> <p>24 actions, these lawsuits to collect on the</p> <p>25 notes, they were commenced before the</p>	Page 142	Page 143
<p>1 JAMES DONDERO</p> <p>2 Is that okay, sir?</p> <p>3 A. I'll do the best I can. If I – if</p> <p>4 I need clarity or caveats, I'll throw them out</p> <p>5 there.</p> <p>6 Q. Okay. Now, I do understand you're</p> <p>7 not a 30(b)(6) witness for HCMFA today. So</p> <p>8 let's make that clear.</p> <p>9 MS. DEITSCH-PEREZ: Thank you.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. As to HCMFA, you're just here in</p> <p>12 your individual capacity as the control person,</p> <p>13 okay?</p> <p>14 Prior to confirmation, do you know</p> <p>15 whether anyone acting on behalf of any of the</p> <p>16 defendants ever disclosed to the bankruptcy</p> <p>17 court the terms or the existence of your</p> <p>18 agreement – agreements with the Dugaboy</p> <p>19 trustee?</p> <p>20 A. I guess generally, I've testified to</p> <p>21 this already. There were numerous</p> <p>22 conversations with Seery, and I know Lynn had</p> <p>23 conversations.</p> <p>24 Q. Sir, I apologize, but I'm going to</p> <p>25 interrupt because I know you're tired; and I</p>	Page 144	Page 145
<p>1 JAMES DONDERO</p> <p>2 confirmation hearing, right?</p> <p>3 A. I – I don't – I don't know.</p> <p>4 Q. All right. I'll represent to you</p> <p>5 that the lawsuits were commenced on or about</p> <p>6 January 22, and the confirmation hearing took</p> <p>7 place, I think, on February 2 and February 3,</p> <p>8 2021.</p> <p>9 Does that refresh your recollection</p> <p>10 at all that the lawsuits were known to you at</p> <p>11 the time of confirmation?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 THE WITNESS: Not specifically. I</p> <p>15 mean, given the details you just explained,</p> <p>16 I guess generally.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Okay. I'd like to refer to you</p> <p>19 NexPoint and HCMFA and HCRE and Services</p> <p>20 collectively as the defendants for the next set</p> <p>21 of questions, okay?</p> <p>22 A. Okay.</p> <p>23 Q. And these questions are in your</p> <p>24 capacity as an individual and in your 30(b)(6)</p> <p>25 capacity, okay?</p> <p>1 JAMES DONDERO</p> <p>2 want to get this done. But my question had to</p> <p>3 do with the disclosure to the bankruptcy court,</p> <p>4 okay? Let me just try again.</p> <p>5 Are you aware, sir, whether any of</p> <p>6 the defendants disclosed to the bankruptcy</p> <p>7 court prior to confirmation the existence of</p> <p>8 the agreements that you entered into with the</p> <p>9 Dugaboy trustee?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form and to interrupting the witness.</p> <p>12 THE WITNESS: I'll say yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Did you do that?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that as part of your</p> <p>17 testimony in the hearing, or did you do it</p> <p>18 through the filing of a pleading?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 THE WITNESS: I don't – I don't</p> <p>22 know about pleadings or filings. I – I</p> <p>23 don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you recall what you told the</p>		

<p>1 JAMES DONDERO</p> <p>2 bankruptcy court about the agreements that you</p> <p>3 entered into with the Dugaboy trustee?</p> <p>4 A. No. I'm not – yes. No. I'm</p> <p>5 not – no, I don't. I don't want to – I don't</p> <p>6 want to start talking and have you strike it or</p> <p>7 object. So I'll just answer specifically until</p> <p>8 you get to the question.</p> <p>9 Q. Yeah. So – so again, I'm not</p> <p>10 trying to trick you.</p> <p>11 Can you recall when you told the</p> <p>12 bankruptcy court that you had entered into will</p> <p>13 the agreements with the Dugaboy trustee?</p> <p>14 A. No.</p> <p>15 Q. Can you remember the subject matter</p> <p>16 of any hearing at which you informed the</p> <p>17 bankruptcy court about the existence of the</p> <p>18 agreements that you entered into with the</p> <p>19 Dugaboy trustee?</p> <p>20 A. I don't know where or how this works</p> <p>21 legally. But every written proposal we put</p> <p>22 forward as a solution and as a plot plan,</p> <p>23 always had a zero on all the affiliated notes</p> <p>24 as being a zero in something that was</p> <p>25 ultimately likely to be compensation.</p>	Page 146	Page 147
<p>1 JAMES DONDERO</p> <p>2 reach outs – reaches out to creditors directly</p> <p>3 again and – to Clemente and the committee; but</p> <p>4 I think the committee already sold all their</p> <p>5 stuff by that point.</p> <p>6 I mean, I – listen, I – but I</p> <p>7 consider those reach-outs and characterizations</p> <p>8 of the notes as not part of settlement under</p> <p>9 the estate and that is likely to be</p> <p>10 compensation notifying the Court generally.</p> <p>11 Q. Okay. Are you aware of any notice</p> <p>12 that was ever given to Judge Jernigan about the</p> <p>13 existence of any of the agreements that you</p> <p>14 entered into with the Dugaboy trustee?</p> <p>15 A. I - I don't know.</p> <p>16 Q. Okay. You're not aware of any as</p> <p>17 you sit here right now; is that fair?</p> <p>18 A. Yes. I'm not aware if any of my</p> <p>19 reach-outs to the people that I described ever</p> <p>20 made it to Jernigan. I don't know.</p> <p>21 Q. Okay.</p> <p>22 A. I know she asked for updates on the</p> <p>23 plot plan. I know she asked for whatever, but</p> <p>24 I don't know what specificity any of the people</p> <p>25 I described presented them to her. So I don't</p>	Page 148	Page 149

<p>1 JAMES DONDERO</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Media Number 3 in the</p> <p>4 deposition of James Dondero. We are back</p> <p>5 on the record. The time is 4:45.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Just to finish up on the topic we</p> <p>8 were on when we took the break, Mr. Dondero.</p> <p>9 Prior to confirmation, do you know</p> <p>10 which of the defendants ever informed the</p> <p>11 bankruptcy court that any of the Promissory</p> <p>12 Notes that are the subject of the lawsuits were</p> <p>13 unenforceable for any reason?</p> <p>14 And when I use the phrase</p> <p>15 "bankruptcy court" here – you know what, let</p> <p>16 me ask a different question.</p> <p>17 Prior to confirmation, do you know</p> <p>18 if anybody acting on behalf of the defendants</p> <p>19 ever disclosed to Judge Jernigan that any of</p> <p>20 the Promissory Notes subject to the lawsuits</p> <p>21 were unenforceable for any reason?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 THE WITNESS: I don't know.</p> <p>25</p>	Page 150	<p>1 JAMES DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Prior to confirmation, did you</p> <p>4 direct anybody to inform Judge Jernigan that</p> <p>5 any of the Promissory Notes were unenforceable</p> <p>6 for any reason?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. I want to direct your</p> <p>9 attention to December 2020.</p> <p>10 Do you recall if you had a</p> <p>11 conversation with Frank Waterhouse concerning</p> <p>12 payments that were due to Highland by any of</p> <p>13 the companies that you directly or indirectly</p> <p>14 own or control?</p> <p>15 A. I'm trying to think. Generally, we</p> <p>16 overpaid on shared services, so – by a</p> <p>17 significant amount, I believe 14, 15 million</p> <p>18 bucks. And then there was a supposed to be an</p> <p>19 overall transition settlement true-up regarding</p> <p>20 the employees, the office space, you know,</p> <p>21 whatever.</p> <p>22 So the – yeah, that's – that's the</p> <p>23 – that's my general recollection.</p> <p>24 Q. But did you give Mr. Waterhouse any</p> <p>25 instructions as to whether to pay or not pay</p>	Page 151
<p>1 JAMES DONDERO</p> <p>2 any amounts that were due and owing to Highland</p> <p>3 under any agreement between Highland and any</p> <p>4 affiliate?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 Are you asking about the Notes or</p> <p>8 the Shared Services Agreements?</p> <p>9 MR. MORRIS: I'm asking about – I'm</p> <p>10 asking very broadly any payments.</p> <p>11 THE WITNESS: I do remember having</p> <p>12 conversations not to pay any more shared</p> <p>13 services.</p> <p>14 And I hope there weren't anymore</p> <p>15 payments on shared services. There –</p> <p>16 There was never a specific to not pay the</p> <p>17 notes.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So your recollection is that you</p> <p>20 instructed Mr. Waterhouse not to make any</p> <p>21 further payments under the shared services, and</p> <p>22 that's the instruction you gave?</p> <p>23 A. Yes.</p> <p>24 Q. Did you ever tell anybody in</p> <p>25 December of 2020 about your conversation with</p>	Page 152	<p>1 JAMES DONDERO</p> <p>2 Mr. Waterhouse?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Do you recall telling anybody other</p> <p>5 than Mr. Waterhouse in December 2020 that no</p> <p>6 payment should be made to Highland under the</p> <p>7 Shared Services Agreement?</p> <p>8 A. I do believe there was a team – I</p> <p>9 can't remember – I know Dustin Norris is on</p> <p>10 that team. He was aware. He was aware. And</p> <p>11 as a matter of fact, I think – yeah. He – I</p> <p>12 know he was aware for sure.</p> <p>13 Q. Anybody else?</p> <p>14 A. There were other people on that</p> <p>15 team, but I can't remember who was on that team</p> <p>16 or who was in the room at any time.</p> <p>17 Q. Is there anything in writing that</p> <p>18 you recall that reflects the instruction that</p> <p>19 you gave to Mr. Waterhouse in December 2020</p> <p>20 that we're talking about?</p> <p>21 A. I believe the back-and-forth and the</p> <p>22 true-up with Seery on the multiple of things</p> <p>23 that I was just discussing, you know, right to</p> <p>24 transition of people, it included no more</p> <p>25 shared services being paid and a credit for</p>	Page 153

<p>1 JAMES DONDERO</p> <p>2 overpayment on shared services. And those –</p> <p>3 those spreadsheets went back and forth, and</p> <p>4 Seery has copies of them also.</p> <p>5 Q. Are you aware of any payments being</p> <p>6 made by the advisors to Highland after</p> <p>7 November 30, 2020?</p> <p>8 A. Hopefully not on shared services. I</p> <p>9 believe there were payments on principal and</p> <p>10 interest on notes.</p> <p>11 Q. Were any of those payments that you</p> <p>12 have in mind made before the end of calendar</p> <p>13 year 2020 – withdrawn.</p> <p>14 Were any of those payments that you</p> <p>15 have in mind made in December 2020?</p> <p>16 A. I don't know. I don't know which</p> <p>17 ones were paid and kept current. I don't know</p> <p>18 which ones were cured. I don't – I don't</p> <p>19 remember which ones were which.</p> <p>20 Q. Are you aware of any note that was</p> <p>21 tendered by one of Highland's affiliates on</p> <p>22 which payment was made in December 2020?</p> <p>23 A. I don't know. I don't know when –</p> <p>24 I don't know which ones were kept current. I</p> <p>25 don't know which ones were cured in December.</p>	Page 154	<p>1 JAMES DONDERO</p> <p>2 I don't know which ones were cured in January</p> <p>3 or February. I don't know.</p> <p>4 Q. Is it your testimony that you</p> <p>5 believe that one or more of Highland affiliates</p> <p>6 made a payment in December 2020 to cure – as a</p> <p>7 cure payment?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. I just – I'm sorry. I –</p> <p>12 A. I – I – okay.</p> <p>13 Q. Yeah. I just want to try to get</p> <p>14 this as cleanly as I can. Did you –</p> <p>15 A. I believe –</p> <p>16 Q. Go ahead, sir.</p> <p>17 A. No. I'll let you go. It's better</p> <p>18 if you ask me.</p> <p>19 Q. Okay. Did you direct anybody to</p> <p>20 make any payment in December 2020 to Highland</p> <p>21 on behalf of any affiliate that you owned or</p> <p>22 controlled?</p> <p>23 A. I believe all notes are outstanding</p> <p>24 and current and in good standing. I don't know</p> <p>25 when they were cured.</p>	Page 155
<p>1 JAMES DONDERO</p> <p>2 Q. Are you just talking about the term</p> <p>3 notes here or the demand notes as well?</p> <p>4 A. All of the above. All of the notes</p> <p>5 as far as I know.</p> <p>6 Q. Are you aware that in December 2020,</p> <p>7 Highland made a demand for payment under all of</p> <p>8 the demand notes?</p> <p>9 A. And I believe they're all current as</p> <p>10 far as interest and principal amortization. I</p> <p>11 believe they've all been cured.</p> <p>12 Q. Okay. Can you identify any payment</p> <p>13 that was made in December 2020 to Highland on</p> <p>14 behalf of yourself or any entity that you</p> <p>15 directly or indirectly own or control?</p> <p>16 A. I wouldn't have been involved in –</p> <p>17 I wouldn't have been involved in normal course</p> <p>18 payments. I know there were – I know for sure</p> <p>19 there were cure payments in January. I don't</p> <p>20 know if there were in December.</p> <p>21 Q. Okay. And that's – we'll get to</p> <p>22 January. I'm just trying to finish up</p> <p>23 December.</p> <p>24 Are you aware of any payments made</p> <p>25 in December 2020 –</p>	Page 156	<p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. – by you – by you or any entity</p> <p>6 directly or indirectly owned or control by you</p> <p>7 to Highland?</p> <p>8 A. I don't have awareness.</p> <p>9 Q. Do you recall that early in 2021,</p> <p>10 Highland gave notice of default on the three</p> <p>11 term notes?</p> <p>12 A. I'm aware in – that January – yes,</p> <p>13 I guess I am aware that Highland declared them</p> <p>14 in default in January, yes.</p> <p>15 Q. And you're aware that in addition to</p> <p>16 declaring them in default, they gave notice of</p> <p>17 acceleration?</p> <p>18 A. I'm not aware of acceleration. I'm</p> <p>19 aware of, I guess, default I had heard.</p> <p>20 Q. Did you ever see the</p> <p>21 notice-of-default letters that Highland sent to</p> <p>22 NexPoint HCRE and services?</p> <p>23 A. I don't believe I've seen all of</p> <p>24 them. I think I've seen one on demand notes.</p> <p>25 I don't think I've – I don't remember seeing</p>	Page 157

<p>1 JAMES DONDERO</p> <p>2 any on term loans.</p> <p>3 Q. All right. So as you sit here right</p> <p>4 now, you don't have a recollection of having</p> <p>5 seen the default notices that were sent by</p> <p>6 Highland in January 2021 with respect to the</p> <p>7 term notes, right?</p> <p>8 MS. DEITSCH-PEREZ: Why don't you</p> <p>9 show him one.</p> <p>10 THE WITNESS: I don't recall. Yeah.</p> <p>11 I mean, I don't – I don't recall seeing</p> <p>12 any of them.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. How did you learn that</p> <p>15 Highland had sent the default notices?</p> <p>16 A. I believe it was at a hearing I</p> <p>17 attended in person from which I called Frank,</p> <p>18 and I was surprised and annoyed that the</p> <p>19 relative de minimis amounts hadn't been paid;</p> <p>20 and I asked him what does it take to cure them</p> <p>21 or make them current.</p> <p>22 And then he told me the numbers, and</p> <p>23 they were small and de minimis; and I told him</p> <p>24 make sure they get paid and make sure the notes</p> <p>25 are cured.</p>	Page 158	Page 159
<p>1 JAMES DONDERO</p> <p>2 lawyer, with Mr. Seery, about this?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 THE WITNESS: No. I thought Frank</p> <p>6 was fully empowered.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Did you ever confirm your</p> <p>9 understanding about the cure with</p> <p>10 Mr. Waterhouse in writing?</p> <p>11 A. In writing? No. I believe it was</p> <p>12 all in that phone conversation from the Court.</p> <p>13 I don't – I don't recall anything in writing,</p> <p>14 but I'll check.</p> <p>15 Q. Do you recall sending him an e-mail</p> <p>16 in which you confirmed with Mr. Waterhouse your</p> <p>17 understanding that the debtor had agreed that</p> <p>18 the payments that were being paid would</p> <p>19 constitute a cure?</p> <p>20 A. No, I didn't – no. At the time I</p> <p>21 didn't think it was necessary. It was – the</p> <p>22 cure amount was calculated by Frank. It was</p> <p>23 paid immediately. It was accepted. I never –</p> <p>24 I never thought to memorialize it beyond that.</p> <p>25 Q. Okay. Did you – did you ever ask</p>	Page 160	Page 161

<p>1 JAMES DONDERO 2 thought was necessary. 3 Q. Okay. Did – did you ever tell 4 Judge Jernigan that you had made cure payments? 5 A. I didn't know I'm allowed to have 6 ex parte conversations with her, but there's a 7 lot of things I'd like to tell her about this 8 case; but no I did not. 9 Q. All right. I'm not talking about 10 ex parte conversations, sir. Let's take 11 confirmation, for example. 12 Did you or anybody acting on any of 13 the defendants' behalf ever inform 14 Judge Jernigan that Frank Waterhouse had told 15 you that the payments in January 2021 would be 16 deemed to be cure payments? 17 A. Not that I'm aware of. 18 Q. Thank you. 19 MR. MORRIS: Give me one more 20 moment. In fact, I'm going to ask for just 21 three minutes. I'm going to check and see 22 how much more I have here. It won't be 23 long if I have anything. So let's go off 24 the record. 25 THE VIDEOGRAPHER: Would you like to </p>	Page 162	Page 163
<p>1 JAMES DONDERO 2 MS. DEITSCH-PEREZ: Do you got it? 3 THE WITNESS: Yes. 4 BY MR. MORRIS: 5 Q. Have you seen this document before, 6 sir? 7 A. No. 8 Q. Let's go to page 15 and see if that 9 refreshes your recollection. 10 Is that your signature? 11 A. Yes. 12 MS. DEITSCH-PEREZ: Yeah. It's late 13 in the day, John. 14 THE WITNESS: Yes. 15 MR. MORRIS: That's why I showed him 16 the signature. 17 BY MR. MORRIS: 18 Q. Does that refresh your recollection 19 that you've seen this before? 20 A. No. It refreshes my recollection 21 that I signed it. 22 Q. Okay. And – 23 A. Not that I recall – not that I 24 looked at it in detail in any way. 25 Q. Okay. Did you review it before you </p>	Page 164	Page 165
		<p>1 JAMES DONDERO 2 signed it? 3 A. I – as I sit here today, I don't 4 remember. So let's go through whatever 5 questions you have. 6 Q. Okay. 7 MR. MORRIS: Go to page 8, please. 8 MS. CANTY: (Complies with request.) 9 BY MR. MORRIS: 10 Q. You will see that Interrogatories 3 11 and 4 ask in substance for you to admit that 12 you never disclosed the terms or existence of 13 the agreement to Frank Waterhouse prior to the 14 commencement of the adversary proceeding. 15 Do you see that? 16 MS. DEITSCH-PEREZ: Wait. Object to 17 the form. Those are two different 18 requests. 19 MR. MORRIS: Okay. Okay. I was 20 trying to do this quickly. We'll do it – 21 we'll do it – we'll do it your way? 22 MS. DEITSCH-PEREZ: No. I think you 23 – okay. 24 BY MR. MORRIS: 25 Q. So let's look at Request for </p>

<p>1 JAMES DONDERO</p> <p>2 Admission Number 3.</p> <p>3 Do you see that Highland asked you</p> <p>4 to admit, quote, "that prior to the</p> <p>5 commencement of the adversary proceeding, you</p> <p>6 never disclosed the terms of the agreement to</p> <p>7 Frank Waterhouse," close quote?</p> <p>8 A. That's on page 8, Number 3, right?</p> <p>9 Q. Correct. And you denied that,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Did you disclose the terms of</p> <p>13 the agreement as we've defined that term to</p> <p>14 Frank Waterhouse prior to the commencement of</p> <p>15 the adversary proceeding?</p> <p>16 A. You know, what I've answered was a</p> <p>17 long answer earlier that the notes were</p> <p>18 compensation. The notes were to be – would be</p> <p>19 forgiven as part of compensation, shouldn't be</p> <p>20 included in any settlement.</p> <p>21 Frank and his group were deeply</p> <p>22 involved in all the plot plan and settlement,</p> <p>23 things that went back and forth. He knew.</p> <p>24 Now, whether he knew the specifics</p> <p>25 of the agreement in terms of, whether I ever</p>	Page 166	Page 167
<p>1 JAMES DONDERO</p> <p>2 A. There wasn't another reason – there</p> <p>3 – no, I don't remember any other context.</p> <p>4 Q. Okay.</p> <p>5 A. But the settlements were regular and</p> <p>6 ongoing –</p> <p>7 Q. Okay.</p> <p>8 A. – in our mind, not in the</p> <p>9 Stonehill's mind.</p> <p>10 Q. Okay. Can you go – can we go to</p> <p>11 page 9, Request for Admission Number 8?</p> <p>12 A. Yes.</p> <p>13 Q. Number 8 we asked you to "admit that</p> <p>14 no document was created prior to the</p> <p>15 commencement of the adversary proceeding</p> <p>16 concerning the existence of the agreement."</p> <p>17 Have I read that right –</p> <p>18 A. I'm just reading what's on page 9,</p> <p>19 admit that prior to the agreement he never</p> <p>20 disclosed any other creditor.</p> <p>21 Q. No, no, no. I'm sorry. We're on</p> <p>22 Number 8.</p> <p>23 Can you read Number 8 out loud?</p> <p>24 A. Number 8, I'm sorry. Admit that no</p> <p>25 document was created prior to the commencement</p>	Page 168	Page 169

<p>1 JAMES DONDERO</p> <p>2 Q. But you just testified a few minutes</p> <p>3 ago, I thought, that you didn't specifically</p> <p>4 tell Mr. Waterhouse of the terms of the</p> <p>5 agreements to him, right? Did I miss –</p> <p>6 A. That's right. I mean, not the</p> <p>7 specific terms, correct.</p> <p>8 Q. Okay. So is there any creditor to</p> <p>9 whom you – is there any creditor of Highland's</p> <p>10 to whom you disclosed the existence of the</p> <p>11 agreements that you entered into with the</p> <p>12 Dugaboy trustee prior to the commencement of</p> <p>13 the adversary proceeding?</p> <p>14 MS. DEITSCH-PEREZ: Asked and</p> <p>15 answered.</p> <p>16 THE WITNESS: Yeah. I mean,</p> <p>17 generally, all the creditors via the</p> <p>18 settlement. And then we have lots of</p> <p>19 one-off conversations with Clubock</p> <p>20 representing UBS where the notes were</p> <p>21 described as going to be forgiven</p> <p>22 compensation, never part of the estate.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. All right. I don't – I don't want</p> <p>25 to wrestle with you.</p>	Page 170	Page 171
<p>1 JAMES DONDERO</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: 24, I'm sorry.</p> <p>5 Page 2?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Page 12.</p> <p>8 A. Page 12. Yes. Which one?</p> <p>9 Q. Number 2.</p> <p>10 A. All right.</p> <p>11 Q. You didn't identify any email</p> <p>12 correspondence in response to Interrogatory</p> <p>13 Number 2; is that correct?</p> <p>14 A. I don't have my e-mails. So we have</p> <p>15 painfully little from the Highland estate.</p> <p>16 Q. Okay.</p> <p>17 A. I think at the time we responded, we</p> <p>18 thought we might get access to things; but we</p> <p>19 haven't been able to come up with anything. We</p> <p>20 have – we have no access to anything.</p> <p>21 Q. Okay. So as you sit here today, you</p> <p>22 cannot identify any e-mail correspondence that</p> <p>23 discusses the existence of the agreement,</p> <p>24 correct?</p> <p>25 A. Not yet, no.</p>	Page 172	Page 173

<p>1 JAMES DONDERO 2 at – 3 A. Yes. 4 Q. – Request for Admission Number 3, 5 is your answer the same on behalf of NexPoint 6 Advisors as it was for yourself as to why you 7 denied Request for Admission Number 3? 8 A. Yes. 9 Q. Okay. If we can go to Request for 10 Admission Number 6, that is the same Request 11 for Admission that we talked about with respect 12 to yourself in your individual capacity a 13 moment ago. 14 Is your reason for denying Request 15 for Admission Number 6 the same reason that you 16 gave for yourself? 17 A. Yes. 18 Q. And looking at Request for 19 Admissions Number 7 and 8, is the reason that 20 you denied those Requests for Admissions 21 because you told Seery and the committee and 22 Clubock that you wouldn't pay anything for the 23 notes because they were supposed to be forgiven 24 as part of your compensation? 25 A. And the independent board, yes.</p>	Page 174	<p>1 JAMES DONDERO 2 Q. Okay. Is there any other reason 3 that you denied Request for Admissions Number 7 4 and 8? 5 A. Not that I can think of at this 6 point in time. 7 I don't think the LPA applies much 8 here, but I may be – 9 MR. MORRIS: All right. I have no 10 further questions. 11 THE WITNESS: Wonderful. Thank you. 12 Have a good evening. 13 MR. MORRIS: Thank you. Take care. 14 MS. DEITSCH-PEREZ: Thank you. 15 MR. MORRIS: Bye now. 16 THE VIDEOGRAPHER: All right. If 17 there are no further questions, this 18 concludes today's deposition. Volume II 19 [sic] consists of three media. We are off 20 the record at 5:21 p.m. 21 THE COURT REPORTER: Everybody is 22 leaving, and I wanted to get everybody's 23 order on the record. 24 MS. DEITSCH-PEREZ: I'd like the 25 rough. And then the regular can be</p>	Page 175
<p>1 JAMES DONDERO 2 whenever you get the regular done. No 3 special rush. 4 THE COURT REPORTER: Okay. Thank 5 you. 6 MS. DEITSCH-PEREZ: You're welcome. 7 THE COURT REPORTER: Ms. Carty, I 8 think there's a standing order for a daily 9 delivery – or an immediate delivery for 10 your firm? 11 MS. CANTY: Yes. 12 THE COURT REPORTER: Okay. I just 13 wanted to confirm that. I'll get that out 14 tonight, then. 15 MS. CANTY: Okay, thank you. 16 (The witness is excused.) 17 (Deposition of James Dondero 18 concluded at 5:21 p.m. CDT.) 19 20 21 22 23 24 25</p>	Page 176	<p>1 C E R T I F I C A T E 2 3 4 I, SUZANNE J. STOTZ, a Certified 5 Shorthand Reporter, Registered Professional 6 Reporter, Certified Realtime Reporter, and 7 Notary Public in and for the State of Texas, do 8 hereby certify that the foregoing is a true and 9 accurate transcript of the stenographic 10 above-captioned matter. 11 12 13 14 _____ 15 SUZANNE J. STOTZ, CSR, RPR, CRR 16 Texas Certification No. 11942 17 18 DATED: November 4, 2021 19 20 21 NOTE: THE CERTIFICATE APPENDED TO THIS 22 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION 23 OF THE SAME BY ANY MEANS, UNLESS UNDER THE 24 DIRECT CONTROL AND/OR DIRECTION OF THE 25 CERTIFYING COURT REPORTER.</p>	Page 177

1 ERRATA SHEET

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2 I have read my testimony in the foregoing
3 transcript and believe it to be true and
4 correct to the best of my knowledge and belief
5 with the following changes:

6 PAGE LINE CHANGE

7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____

19 WITNESS SIGNATURE DATE

20

21 Sworn and subscribed to before me this
22 _____ day of _____, 2021.
23
24 Notary Public of the
25 State of _____.

<p>\$</p> <p>\$1.55-million 64:22</p> <p>\$12.3 140:13 141:6, 12</p> <p>\$2 62:6</p> <p>\$2.4 91:11,13,23 92:6,11,14 93:12 103:17 104:2 107:23 109:2,25 110:13,23</p> <p>\$2.4-million 91:19</p> <p>\$23 138:13</p> <p>\$23.7 137:10,22</p> <p>\$250,000 58:20</p> <p>\$5 101:22 102:17 111:17,21,24 112:4, 10 117:9 119:23</p> <p>\$5-million 116:16 120:10</p> <p>\$500,000 62:5</p> <p>\$6 99:6,16,22</p> <p>\$6,068,851 98:18</p> <p>\$7.4 90:17 125:4 129:5 140:22 141:7</p> <p>\$7.44 102:7</p> <p>\$7.5 119:10,14,16</p> <p>\$7.8 103:5</p> <p>0</p> <p>000025 130:19</p> <p>000031 130:19</p> <p>1</p> <p>1 9:3 94:3 141:19</p> <p>100 96:24</p> <p>12 171:22 172:7,8 173:24</p> <p>13 26:14</p> <p>14 26:14 151:17</p>	<p>15 151:17 164:8</p> <p>15-C 130:11 131:3 137:3</p> <p>17 20:20</p> <p>18 20:8 26:13 71:16 73:15</p> <p>19 20:8</p> <p>1939 104:7</p> <p>1:17 9:11</p> <p>2</p> <p>2 52:24 94:19 97:15 108:25 132:9 135:15, 18 136:13 143:7 171:23 172:5,9,13</p> <p>2,500,024 60:10</p> <p>2.4 104:14 110:20</p> <p>2.5 61:5</p> <p>20 57:16 58:2</p> <p>200,000 64:22</p> <p>2016 57:13,21 58:18 59:3</p> <p>2017 20:8,21 60:2,9 62:6 63:17 73:14 137:17</p> <p>2018 20:21 23:4 122:24 123:9,16 129:4</p> <p>2019 23:5 25:3 90:16, 25 91:13,24 97:15 99:22 102:7 108:10, 25 110:3,25 111:20, 25 112:5,10,18 113:3 114:9 116:15 117:5 119:9,24 120:11 123:24 124:25 128:14 140:24</p> <p>2020 25:3,9 109:21 130:9,18,23 133:19, 23 136:11 137:3,8,9 138:20 139:13,23 140:14 141:22 142:6 151:9 152:25 153:5, 19 154:7,13,15,22 155:6,20 156:6,13,25</p>	<p>2021 9:10 136:7,20 139:3 142:17 143:8 157:9 158:6 159:10, 24 161:23 162:15</p> <p>21 141:15</p> <p>22 143:6</p> <p>23 130:18,23 133:18, 23 136:11</p> <p>24 163:9,13,23,24 171:24 172:4</p> <p>252 124:3</p> <p>27 173:2,9</p> <p>2:28 66:12</p> <p>2:43 66:15</p> <p>2:44 67:5</p> <p>3</p> <p>3 117:5 119:23 123:24 143:7 150:3 165:10 166:2,8 173:16 174:4,7</p> <p>30 8:18 12:6,22 22:3, 4,5 137:9 140:14 154:7</p> <p>30(b)(6) 14:23 15:7 17:4 18:18,21 68:24 76:24 143:24 144:7</p> <p>300,000 64:23</p> <p>31 10:16 82:10 122:24 123:9,15 129:4 137:17</p> <p>34 22:5 123:4,6</p> <p>35 22:6</p> <p>36 22:6</p> <p>375 102:10</p> <p>39 104:8 124:23</p> <p>3:21 94:6</p> <p>3:22 94:21</p> <p>3:28 66:7</p> <p>3:40 66:8</p> <p>3:53 115:9</p>	<p>3:54 115:12</p> <p>3rd 111:20</p> <p>4</p> <p>4 9:10 165:11</p> <p>4.4M 118:5</p> <p>40 12:6,24</p> <p>47 104:9</p> <p>4:38 149:24</p> <p>4:45 149:22 150:5</p> <p>5</p> <p>5 103:5</p> <p>50 59:17,19 82:8</p> <p>50,000 57:20</p> <p>51 82:7</p> <p>53 93:18 94:23 95:3 97:12 136:2</p> <p>54 107:10,12 136:2</p> <p>56 116:20,22</p> <p>57 118:24 119:3</p> <p>59 130:15,17</p> <p>5:03 163:4</p> <p>5:06 163:7</p> <p>5:21 175:20 176:18</p> <p>5:37 149:17</p> <p>5:38 149:20</p> <p>6</p> <p>6 174:10,15</p> <p>65,772 63:12</p> <p>68 55:21 56:2,9</p> <p>7</p> <p>7 173:11,15 174:19 175:3</p> <p>70 58:3</p>	<p>75 35:3</p> <p>8</p> <p>8 165:7 166:8 168:11, 13,22,23,24 174:19 175:4</p> <p>82 13:3,12,17 14:3 39:16 47:10,20 48:8 81:25 82:10,11,17 83:18 171:6</p> <p>9</p> <p>9 25:9 168:11,18 169:19,21</p> <p>90-day 47:22</p> <p>A</p> <p>ability 27:16 43:6 45:10 47:5</p> <p>acceleration 157:17,18</p> <p>accepted 8:25 160:23</p> <p>access 172:18,20</p> <p>accommodated 66:23</p> <p>accord 89:18</p> <p>account 47:2 100:18 102:7</p> <p>accountants 134:5</p> <p>accounted 110:22</p> <p>accounting 37:24 107:19,22 108:2,12 110:8 111:13 117:5, 9,17 125:23 128:4,5 134:2</p> <p>accurately 27:24</p> <p>acting 40:22 59:10 65:20 73:5 105:7 134:16 138:6 141:10 142:4 144:15 149:7 150:18 159:8,20 161:3,10 162:12</p>
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